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THE
POOR LAW MANUAL
FOR SCOTLAND :

CONTAINING

THE PRINCIPLES OF THE POOR LAWS; AND
DECISIONS IN SHERIFF COURTS.

REVISED, AND GREATLY ENLARGED,

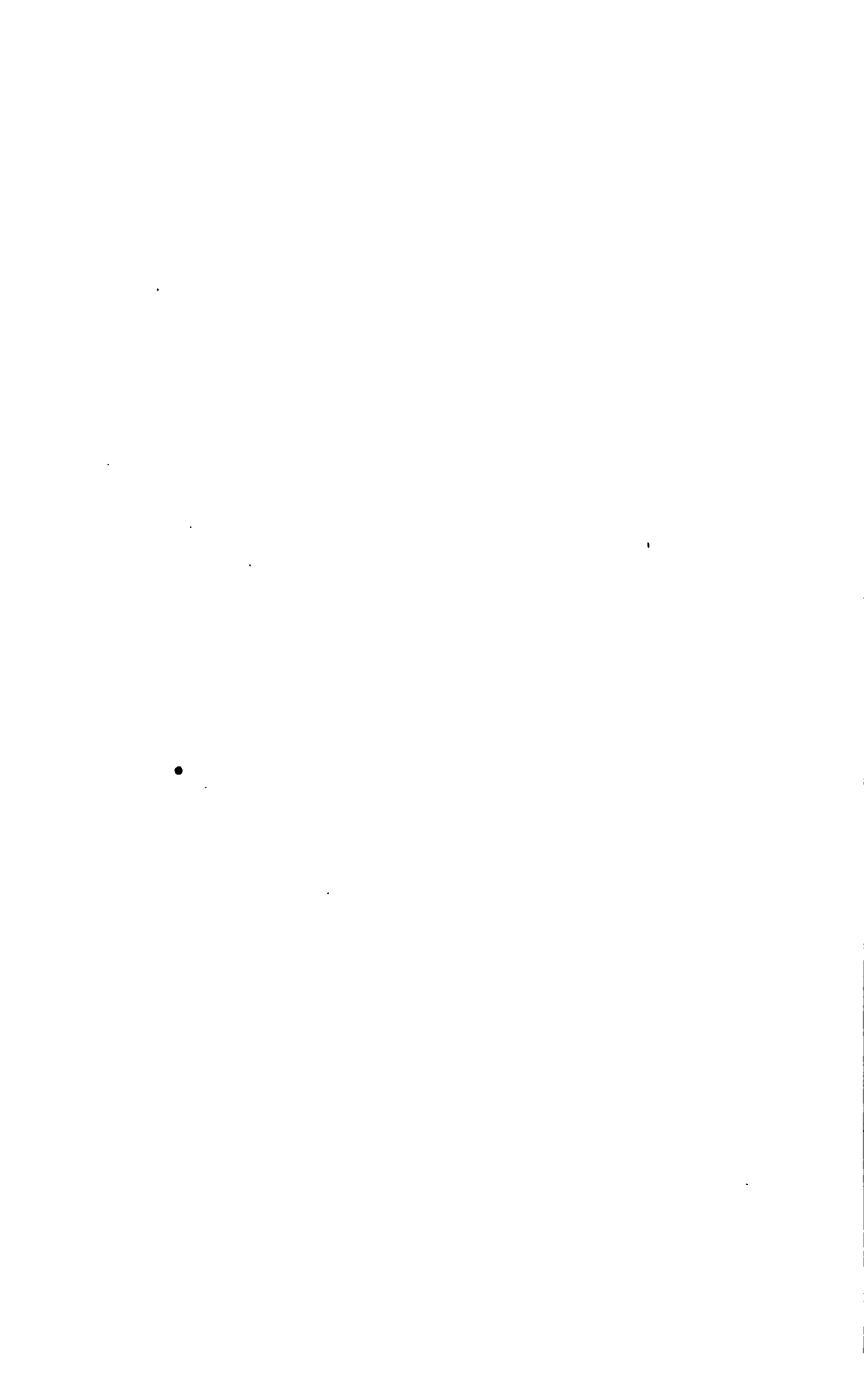
BY

ALEXANDER M'NEEL-CAIRD, Esq.

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TO THE
HONOURABLE LORD MURRAY,
ONE OF THE SENATORS OF THE COLLEGE OF JUSTICE,
AN ACTIVE FRIEND AND JUDICIOUS PATRON OF
THE POOR,
THIS LITTLE WORK,
DEVOTED TO THE CONSIDERATION OF THEIR RIGHTS,
IS RESPECTFULLY INSCRIBED,
BY THE AUTHOR.



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PRINCIPLES OF THE POOR LAWS.

CHAPTER I.

PRELIMINARY REMARKS.

THE public provision for relief of the poor, depends wholly on statute. It was introduced by the act 1579, c. 74, of which, with the other old statutes, and proclamations ratified by statute, an analysis will be found elsewhere.¹

Some new principles, and many improvements of administration, have been introduced by the recent act, (8 & 9 Victoriæ, cap. 83,) which is appended without abridgment.² An Index is also annexed, which is so constructed that any of the provisions of the act may be consulted with facility, and therefore it is unnecessary to recapitulate them.

Our present purpose is to give a succinct and coherent view of the prominent features of the law, referring on other points to the copious details which are furnished elsewhere.

CHAPTER II.

OF THE NATURE AND EXTENT OF PAROCHIAL RELIEF.

1. The relief to be given to the poor is described in the older statutes as "needful sustentation."³ In the recent

¹ P. 33.

² P. 97.

³ 1579, c. 74. See p. 34, No. 20.

 THE NATURE AND EXTENT OF PAROCHIAL RELIEF.

act it is similarly spoken of, as “sufficient means of subsistence,” and “the necessary means of support.”¹

2. This includes “lodging and abiding places,” “by themselves or in house with others;”² the “nutritious diet” and clothing necessary to sustain life and health; and also, as provided by the recent Statute,³ medicines, cordials, and medical attendance.

3. The measure of relief for the poor is also described⁴ as “what may entertain them according to *their respective needs*.” The amount of relief, therefore, is not unvarying and alike to all, but adapted to the particular circumstances of each claimant. Among the elements proper for determining it, are the means and health of the applicant,—his inability, total or partial, to earn a livelihood,—the number, age, and condition of his family,—the cost of house-rent, and the means of living in his neighbourhood,—everything, in short, which contributes to ascertain what, in his particular circumstances, will afford sufficient means of subsistence.

4. The relief may be given either by a direct supply of the actual necessities of life, or by a money allowance. The Parochial Boards are the primary judges, both of the rate of allowance, and of the nature of the relief. The pauper, on the other hand, where he considers his relief inadequate, has the right to complain to the Board of Supervision, whose certificate, where they hold his complaint well founded, entitles him to sue *in forma pauperis* in the Court of Session.⁵

5. Two cases occurred in the Supreme Court, immediately before the passing of the late statute, which afford an indication of the view taken by the Court, in regard to the amount of relief. In the first of these, the Court held that an allowance of 3s. 6d. per week is not sufficient, as needful sustentation, to a widow alleged to be in good health, having seven children, though one of

¹ Section 70. See p. 143, l. 2. ² 1579, c. 74. See p. 34, l. 30, and p. 36, l. 2. Junor, No. 8, Sheriff Court Decisions, p. 221. ³ Section 69. See p. 139. ⁴ Proclamation, 11th Aug. 1692. See p. 35, l. 39. ⁵ See p. 146.

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the children was provided for by her uncle, and the eldest, a daughter under 14, was able to earn from 2s. to 3s. per week, and the mother earned 2s. per week:—It was observed from the Bench, that the earnings of the daughter were not more than sufficient for her own clothing and support, and were not to be deemed applicable to the maintenance of either her mother, or her infant brothers or sisters:—6s. per week was suggested by the Lord President as a reasonable allowance, to be reduced, at the discretion of the Kirk-Session, when any of the children should be able to earn anything towards their own support: But the Court, without adopting this suggestion, remitted to the Heritors and Kirk-Session to reconsider the case, and to award such addition to the former weekly aliment, as might be reasonable, under the whole circumstances of the case, and to make the same draw back to the date of the original application.¹—In the second case, it was decided that an allowance of L.6 a-year, with ten carts of peats, and a house to live in, was insufficient sustentation for two sisters, one 84 and infirm, and the other 86 years of age and bedrid, who could do nothing for themselves; and a remit made to the Heritors and Session “to award such further allowance as may, under the whole circumstances of the case, be deemed reasonable.” The Heritors and Session having delayed to increase the aliment, the Court, on a new advocacy, ordained them to pay 3s. 6d. weekly to each of the two paupers.²

6. No action is now competent “relative to the amount of relief granted by Parochial Boards,” without a certificate by the Board of Supervision, that there is a just cause of action.³

7. The rule adopted by the Board of Supervision, in

¹ *E. Pride or Duncan v. Parish of Ceres*, 14th Feby. 1843; *Dunlop's Reports*, 5, 552. See p. 66, No. 71.

² *Halliday v. Parish of Balmaclellan*, 11th June 1844, B.M.Y. 6, 1131; 16th July 1845, B.M.Y. 7, 1057. See p. 67, No. 75.

³ *New Act*, Sect. 75, p. 146.

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judging of questions as to the amount of relief, is, that while it would be a fatal error to make the condition of the pauper more desirable than that of the independent labourer, "the safest guide to a right estimate of what constitutes needful sustentation, in any parish, is to be derived from a knowledge of the earnings on which industrious labourers are able, in that parish, to maintain themselves and their families without parochial aid."¹

8. Except in special circumstances, and with consent of the Board of Supervision, insane or fatuous paupers must be maintained by the parish in a lunatic asylum.²

9. Sick paupers may be sent for treatment to an infirmary or hospital, and the blind or deaf and dumb to any asylum suited to their condition. The Parochial Boards are authorised, by the recent statute, to contribute to the support of such institutions.³—A case occurred in Dumfriesshire,⁴ where an applicant, admittedly a fit object of parochial relief, and disabled by disease, refused to go to an infirmary, when required by the Parochial Board. The inspector stated that the disease could be cured by treatment in the infirmary, but not if the applicant continued to reside in his own house; and that an offer had been made to send him to the infirmary, and to aliment him there, but that he positively refused to go. The applicant admitted his refusal to go to the infirmary. The Sheriff-substitute held that the inspector could not attach any condition to his grant of relief, and decided against the parish, who acquiesced. But the applicant having complained afterwards to the Board of Supervision that the relief he received was inadequate, the Board refused the application, "in respect you (the applicant) have it in your power to receive adequate relief in the infirmary at Dumfries."

¹ First Report, p. 20.

² New Act, Section 59, p. 132.

³ Section 67, p. 137.

⁴ *Dempster v. Inspector of Kirkmahoe*.
[In this case I have not been able to see the papers, but have been favoured with this account of it by the Judge who decided it.]

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10. Where a poor-house shall be established in terms of the late statute,¹ the Parochial Board may either give out-door relief, or, at its discretion in each case, provide in the poor-house, for "the aged and other friendless impotent poor," and "those poor persons who, from weakness or facility of mind, or by reason of dissipated and improvident habits, are unable or unfit to take charge of their own affairs."

11. There appears no reason to doubt that, under the authority of the old law, the poor-house test may, in the discretion of the Parochial Board, be applied to other paupers also: but, as an offer of admission to the poor-house involves a question as to the "adequacy" of relief, it is competent to the pauper in all cases, to appeal to the Board of Supervision, on being required to accept poor-house relief.

12. It has been repeatedly held in the Sheriff Courts, that a person who has been offered admission into the poor-house, cannot competently complain of relief having been refused;² and the Board of Supervision has recorded its opinion,³ that "many cases occur in almost every parish, in which it is most desirable that the parochial authorities should have it in their power, not only to provide in a poor-house for the various classes of helpless persons referred to in the statute, but also to test, by an offer of admission to the poor-house, the destitution of parties whose disability, or the extent of whose disability, is doubtful, and believed to be pretended or exaggerated. In towns more especially, it is desirable that there should be poor-houses for the reception both of the helpless, and of those whose destitution or disability is doubtful."

13. A question of some difficulty has been raised by the demand of a Parochial Board, that a mother, (a wi-

¹ Sect. 60, p. 133, et seq.
p. 265, and No. 34, p. 265.

² Sheriff Court decisions, No. 33,
³ First Report of the Board of Su-

pervision, p. 14.

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dow, in the case referred to), applying for relief on behalf of her infant child, should accompany it into the poor-house, though able and willing to maintain herself if relieved of the support of the child. On the one hand, it is manifest that the poor-house is of little value as a test in such a case, if applied to the child alone. On the other, there is great apparent hardship in compelling an able-bodied woman, who is willing to maintain herself, to submit to the confinement of a poor-house, and the degradation and treatment of a pauper. For the parish, it may be contended that the mother, as the head of the house, is herself the true object of relief, in respect of her inability to maintain her household,—a view which appears to have the sanction of several authorities.¹ On the other hand, it is urged, with considerable plausibility, that the infant's settlement, where it is a lawful child, is not necessarily derived from the mother—nay, in the great majority of cases will depend on the settlement which the father had during his life; that its claim to relief, whatever be the origin of the claim, is *a direct right in its own person*,² though, by reason of its tender years, its mother's intervention is employed to prefer it;—that the child by consequence is, in the case supposed, the only proper object of relief (an opinion which seems to be sanctioned by Mr Dunlop,³) and hence the only party who can be dealt with as a pauper. Other relatives, besides the mother, are liable to support the child, by a tie as binding in law, if more distant in relationship; and if they also be willing to maintain themselves, though unable to provide for the child, are they all to be subjected, successively or simultaneously, to the test of the poor-house? If the mother were to marry a second time, (a case in which it is at least doubtful whether the child's

¹ Mary Wells, No. 28, p. 255; Craig, No. 11, p. 228; Smith, No. 14, p. 234; Sheriff Court Decisions.

² Lasswade, 6th March 1844, B.M.Y. 6, 956. See p. 66, Nos. 73, 74. See Lord Justice Clerk's, Lord Moncrieff's, and Lord Medwyn's opinions. See *Infra*, p. 16, No. 40.

³ Dunlop, p. 358, chap. 2, 24.

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settlement might not be separated from hers,) could the mother and her husband be obliged to accept poor-house relief, along with the child, in a parish on which they have no claim, as a condition of effect being given to the child's own right? Or if the child were insane, so that it would be the duty of the board to send it to an asylum, could the mother be compelled to go with it there? —A case of this kind having come before the Sheriff of Edinburgh, the pauper's complaint was dismissed as incompetent, "in respect there has been no refusal of relief;"¹ and a similar question having come before the Board of Supervision, it would appear that they rejected it, holding that the relief was not inadequate.² These judgments, however, can scarcely be held to settle or exhaust the question; and it still remains for the Supreme Court to determine whether the condition attached to the child's relief was, as is alleged, illegal and oppressive. As the question does not relate to the amount of relief, but to its nature and conditions, the intervention of that Court seems quite open without the previous certificate by the Board of Supervision, required by the 75th section of the late Statute.

14. In whatever form the Parochial Board may think fit to convey relief, they are not bound to award it for any fixed and definite future period.³ And they have at all times the right, on the occurrence or discovery of new circumstances, to withdraw, modify, or increase the relief afforded, or to convey it in a different form.

¹ Sheriff Court Decisions, No. 34, p. 265.

² *Ib.*, and Lord Ordinary's note, in case of Isabella Gunn, 6th March 1847; Jurist 19, 392. See p. 150, note.

³ Robert, 5th February, 1825. 3 S. and D. 50. See p. 64, No. 66. Dunlop, 359.

CHAPTER III.

OF THE PERSONS WHO ARE PROPER OBJECTS OF RELIEF.

15. The necessitous poor, who, from bodily or mental weakness or infirmity, are unable to earn a livelihood, are the acknowledged objects of parochial support. They are specifically included in the statutes as the "aged pure, impotent, and decayed persons;"¹ also "orphans and other poor children" under 14 years of age, "who are left destitute of all help."²

16. Those who have reached 70 years, are regarded as disabled by old age alone.³

17. It may still be considered an open question, whether the able-bodied are entitled to relief, when unable to earn a livelihood during periods of dearth or general distress. The prevalent opinion is, that they are not. But there seems to be room for maintaining that destitution, from whatever cause except wilful idleness, is the true test of a claim to parochial relief.⁴

18. At all events, the Parochial Boards have now the *power* to extend relief to the able-bodied in distress, and the other occasional poor,⁵ as well as to those who are permanently disabled.

19. Foreigners⁶ having a settlement, and bastards,⁷ are not excluded from the benefit of the poor-law. And it would seem that a destitute foreigner, though having no settlement in Scotland, is entitled to relief, under the 70th section of the recent statute, from the parish where he may apply.⁸ Provision is made by the Statute for the removal of such persons, if born in England, Ireland, or the Isle of Man;⁹ but there is no si-

¹ 1579, c. 74. See p. 34, l. 1.

² 1661, 38. See p. 34, l. 27,

and p. 33, l. 1.

³ 1424, 42; 1579, 74. [See p. 33, l. 1.

⁴ See note, p. 138.

⁵ See p. 138, Sect. 68.

⁶ Higgins,

9th July 1824, 3 S. 239; (N. E. 168); 21, F.C. 588; Dunlop, 570. See p. 64, No. 65.

⁷ Rescobie, 28th Nov. 1801, F.C. See p. 61, No. 53, p. 62, No. 57.—Gladsmuir, 11th June 1806, F. C. See p. 62, No. 57.

⁸ P. 141.

⁹ P. 151.

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milar provision for the case of others born out of Scotland;¹ and if foreigners generally shall be held to fall within this provision of the statute, they may thus become permanent burdens on a parish, without having a settlement in it. The same remark applies to those poor persons whose settlement cannot be ascertained.

20. Considerable difficulty frequently occurs in regard to claims of relief, where the disability or destitution is only partial. There are few cases of greater nicety, and none where more mischief arises from an erroneous decision, than those of young widows and the mothers of illegitimate children, who, though able to maintain themselves, allege their inability to provide for their offspring. In parishes where there is a steady demand for female labour, with good wages, an able-bodied woman should be able to maintain, with her own earnings, one child, or even more. And where the situation of the parish is such as to give her a reasonable prospect of supporting herself and children by her own exertions, the Parochial Board is entitled to exercise its discretion in refusing relief, either partially or totally, according to the circumstances of the case.²

21. In like manner, a man who may be both able and willing to maintain the rest of his family, may be wholly unfit to provide for the unusual expenses attendant on an idiot child. And many other cases of a similar nature will readily occur to all who are conversant with the practical operation of the Poor Law.

22. One cardinal rule is, that a claimant of relief must be without any other adequate means of support, for him-

¹ The provisions in the old statutes "for expelling stranger vagabonds from the parish," and directing the poor from parish to parish, until they arrive at the parish of their nativity, if they were ever intended for the removal of foreigners, do not seem to be now available for that purpose.

² Dunlop, 358, chap. II. sect. 24. See also the case of Janet Lyall, p. 54 and 55. See also Sheriff Court Decisions, No. 29, p. 256, No. 30, p. 258, No. 31, p. 261, and No. 4, p. 214.

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self, or those who are dependent on him.¹ If he have the means of living actually in his power, he cannot claim relief although on a balance of his affairs he might be found penniless. And should he have property which is not readily available, or merely prospective, or reversionary, he is bound, if required, to transfer it to the parochial board, in security of their advances for his support. In such a case, indeed, if the interest be marketable, it would seem that the parochial board may insist on its being disposed of before the applicant can maintain his claim for relief.² But where the pauper has a joint right to property which he cannot dispose of without the consent of others, it has been held, in the Sheriff Court, that he is entitled to immediate relief, reserving recourse against the property.³

23. If the advances of a parish be given unconditionally, and without any previous conveyance or obligation, they will not found a claim against the recipient's property after his death; and it has even been doubted whether they could be made available, during his life, against funds subsequently acquired by him.⁴ But an exception seems to be admitted in the case of an idiot who cannot grant a conveyance, and whose property the Parochial Board may use for his support.

24. There are special provisions by statute for the case of poor persons having public pensions, a summary of which is given elsewhere.⁵

¹ 1579, 74, "*quhilkes of necessitis mon live bee almes*," "*such as mon necessairtis live by almes*," p. 34, l. 8, 17. 1661, 38, "*noway able to gain their own living*," p. 34, l. 22.

² Maidment, 25th May 1815.—F. C. as reversed 27th May 1818. 6 Dow. 257. See p. 52, No. 5, p. 53, No. 11, and p. 58, No. 33. Drysdale, 3d December 1831, 10 Shaw, 98. See p. 53, No. 11. Compare with M'Cartney, Sheriff Court Decis. No. 6, p. 216.

³ Johnston or Hastie, Sheriff Court Decis. No. 38, p. 277.

⁴ M'Lachlan, 25th January 1828, 6. S. 443. Dunlop, 397, See p. 82, No. 146.

⁵ P. 43, et seq.

CHAPTER IV.

OF SETTLEMENTS.

I.—SETTLEMENT IN GENERAL, AND LIABILITIES INDEPENDENT OF IT.

25. The Parish where a pauper has his Settlement, is that which is liable to maintain him.—But

- (1.) In regard to prisoners in public jails, their aliment, in the case of civil prisoners, is payable by the incarcerator;¹ and in the case of others, is provided for by an assessment levied on the county² in which the prison is situated.
- (2.) It seems to have been settled, that in the case of a person who, on trial for a crime has been found to have committed it while in a state of insanity, and been confined by order of Court, the parish of the lunatic's settlement is ultimately liable for his maintenance, and that the parish where the crime was committed and the lunatic apprehended, must bear the burden till the parish of settlement is discovered.³ But under two late statutes,⁴ such prisoners are now usually confined in a department of the general prison at Perth, the expenses of which prison, under a recent arrangement, are defrayed by the Crown.⁵

26. The parish, however, has certain liabilities independent of settlement.

¹ 2 & 3 Vict. c. XLII. s. 29. ² 2 & 3 Vict. XLII. s. 38. ³ Scott, 13th Nov. 1818. F. C. See p. 63, No. 62.—Wigtonshire, 21st February 1823. 5th June 1827, S. & D. On appeal, 10th March 1830, W. S., See p. 64, No. 64.—Kilmorich, 10th July 1839, D. See p. 65, No. 68. ⁴ 2 & 3 Vict. XLII. 30. 7 & 8 Vict. XXXIV. 12.

⁵ It does not seem quite clear whether the Crown, by whom the expense of the General Prison is defrayed, could maintain a claim of relief against the parish, on account of lunatic prisoners.

 I.—OF SETTLEMENT, AND LIABILITIES INDEPENDENT OF IT.

- (1.) Where a child has been exposed, and its parents and birth-place are unknown, the burden of its support is laid on the parish of exposure.¹
- (2.) Where a furious lunatic is found at large, and is apprehended for the protection of the lieges, the parish where he was resident, or found, is liable in his support, until his parish of settlement is ascertained.² It would appear that criminal prisoners of this description also, may be removed by the General Prison Board to the General Prison at Perth.³ But
- (3.) A much more extensive obligation is imposed on parishes, independently of settlement, by the recent statute. Under one of its provisions, poor persons, if in the situation which legally entitles them to parochial relief, may demand immediate maintenance in any parish to which they may apply, though they have no settlement in it,⁴ and such interim maintenance is to be continued “until the parish or combination to which such poor person belongs be ascertained, and his claim upon such parish or combination admitted, or otherwise determined, or until he shall be removed.” Some of the consequences of this provision have been already noticed.⁵
- (4.) The parish where a vagabond had been apprehended, was formerly liable to maintain him in prison while under sentence for vagrancy, to the extent of “ane pund of ait bread and water to drink,”⁶ but this liability appears to be abolished by the Prison Act.⁷

27. Settlements are acquired by RESIDENCE; fail-

¹ Thomson, 17th Nov. 1808, F. C. See p. 62, No. 58.—Rescobie, 28th Nov. 1801, F. C. See p. 62, No. 54.

² 4 & 5 Vict. c. LX. s. 5.

See p. 42, l. 25, also, p. 9, note 3.

³ 7 & 8 Vict. xxxiv. 12.

⁴ Sect. 70. See p. 141.

⁵ Supra, p. 9. S. 19.

⁶ 1579, c. 74.

See p. 33, l. 17.

⁷ 2 & 3 Vict. c. XLII. s. 18.

 II.—SETTLEMENTS BY RESIDENCE.

ing residence, by PARENTAGE; failing both, by BIRTH. The settlement of a married woman is also constituted by MARRIAGE.

II.—SETTLEMENTS BY RESIDENCE.

28. The recent act has made important changes on this branch of the law.

- (1.) It requires that there shall be a continuous residence of five years,¹ (instead of three as formerly,) to establish a settlement by residence.
- (2.) It requires, moreover, that the party shall have maintained himself, during that time, "without having had recourse to common begging,"² and,
- (3.) Also, "without having received or applied for parochial relief."—These provisions seem to have been intended for the desirable purpose of substituting tangible facts of easy ascertainment, for the more indefinite criterion which formerly prevailed. But the clause is so expressed as to enact new grounds of disqualification, without abolishing that which formerly existed. And therefore it would seem that it must still be stated in the same terms as formerly, that a settlement cannot be acquired by residence while the parties are "proper objects of parochial relief," even though they should not have had recourse to common begging, or made any application to the parish authorities for aid.

29. It is provided farther by the new act, that a settlement, acquired by residence, shall be lost, if the party, during any subsequent period of five years, shall not have resided continuously, for at least one year, in the parish or combination.³ It will probably follow, that absence for four years and a day, will forfeit the settlement, by making it impossible to fulfil the condition of one full year's residence within the period of five years.

¹ Sect. 76. See p. 147.

² Sect. 76. See p. 148.

³ Ib. p. 149.

 II.—SETTLEMENTS BY RESIDENCE.

30. This loss of 'settlement by non-residence will thus uniformly occur, before the party can have acquired a new settlement by residence elsewhere. The effect will be to throw the party back on the settlement of parentage or birth, and it will lead to questions of great nicety in cases of derivative settlement.⁴

31. Persons, who, previous to 4th August 1845, (when the new act passed,) had acquired a settlement by virtue of a residence of three years, and had also before that time become proper objects of parochial relief, continue under the old law of settlement, are not affected by the provisions as to five years settlements, and do not forfeit their settlement by non-residence.

32. Residence, in questions of settlement, though it must be continuous, and for the complete period, need not be constant. A deficiency of a fortnight, at the beginning or end of the term, has been held to prevent the settlement being acquired, though occasional absence of equal duration during its currency, or even longer, if *animo revertendi*, would not have had that effect.¹

33. If the party have maintained himself without having had recourse to common begging, and without having received or applied for parochial relief, and have not during his residence become a proper object of such relief, a legal settlement may be gained by residence alone, without any industrious occupation.² It has been held, that residence as an apprentice establishes a settlement, though the apprenticeship began when the boy was only 14 years of age; and, during the period of his residence, his labour was inadequate to his support. He resided with his master, and was supplied with necessaries by his father.³

34. It had not been decided under the old law, whether

¹ Crieff, 19th July 1842, D. 4, 1538. See p. 65, No. 70. William Kidd, No. 16, Sheriff Court Decis. p. 237.

1801, F. C. See p. 62, No. 55.

² Rescobie, 28th Nov. 1801, F. C. See p. 62, No. 55. ³ Cockburnspath, 9th June 1809, F. C. See p. 63, No. 59.

⁴ See p. 21, sect. 56.

IV.—SETTLEMENTS BY RESIDENCE.

a person without funds, and disabled from working, can acquire a settlement by residence, while supported by relations bound in law to aliment him. The provisions of the new act are rather favourable to such a claim, the party having maintained himself in terms of its conditions, from funds due to him under a legal obligation, without having recourse to common begging, and without receiving or applying for parochial relief.¹

35. A person, who, though subject to mental derangement, was able to work so as *in a great measure* to support himself, and who had never sought parochial relief, has been found capable of acquiring a settlement by residence.²

36. A married woman cannot, under any circumstances, acquire a settlement, during the subsistence of the marriage, by residence independent of her husband.³ Even her maiden settlement, acquired by residence, is suspended by her marriage. But Mr Dunlop suggests, that in the event of her residing with her husband in a parish where he does not acquire a settlement prior to his death, it would seem unjust not to allow the widow the benefit of her residence preceding that event, to the effect of acquiring a settlement, by residence for the additional period requisite to complete the term required by law.⁴

37. A child under 14 years of age cannot acquire a settlement by residence, even though living out of family, and in a different parish from its parents, or though they be dead, or have deserted it. And the rule continues even when the child is above that age, if it necessarily remains a member of the parent's family, unemancipated, from imbecility or bodily weakness.⁵

¹ Eliz. M'Camon or Armstrong, Sheriff Court Dec. No. 3. p. 212, Grace Henderson or Meek, Do. No. 21, p. 243.

² Haddington, 19th

Dec. 1837, S. See p. 64, No. 67. Grace Henderson or Meek, ut sup.

³ Pennicuik, 3d March, 1813, F. C. See p. 63, No. 60.

⁴ Dunlop, 375. See p. 20, Sect. 54.

⁵ Howie, 25th January 1800, F. C. See p. 61, No. 50.

 III.—SETTLEMENTS BY PARENTAGE.

38. The last settlement acquired by residence, is that which is liable for a pauper's maintenance, and it is only where there is no known settlement by residence, or where the last settlement acquired by residence has been lost by non-residence, that the settlement by parentage or birth is liable.

 III.—SETTLEMENTS BY PARENTAGE.

39. A settlement by parentage is released by the acquirement of a new settlement by residence, and also, in the case of a female, by marriage. But it does not seem to be lost by emancipation, nor until a new settlement is acquired.¹ In a very recent case, it was observed from the Bench that a child can in no case be deprived of the parent's settlement unless by acquiring a separate settlement of its own.²

40. A lawful child at its birth acquires the settlement of its father. During pupillarity, it follows the changes of the father's settlement, even though residing apart from him, and in a different parish, or though deserted by its parents, or though they be dead, the child not being then capable of acquiring a separate settlement for itself. This is not, strictly speaking, a derivative settlement. It is the proper settlement of the child, in its own right, as a part and member of the father's family; and the child retains that settlement, although the father may have lost it, by his removal to a different parish, after the child has reached the years of puberty, the child still residing apart from him, and being then capable by law of acquiring a new settlement by its own residence.³

41. It was at one time doubted whether the settlement of a lawful child could, in any circumstances, be derived

¹ Dalmellington, 22d January 1822, Shaw. See p. 63, No. 63. Las-
swade, 6th March 1844, B. M. Y. See p. 66, No. 75.

² Gray, 5th March 1847. Jurist, 19, 319. See p. 67, No. 78. ³ Lasswade,
6th March 1844, B. M. Y. Howie, 25th January, 1800, F. C. See p.
61, No. 50.

III.—SETTLEMENTS BY PARNTAGE.

from its mother. But in a case where the mother acquired a settlement for herself, by residence after her husband's death, her lawful infant child was held to have thereby acquired the same settlement.¹ It did not appear in that case that the father before his death had acquired any settlement by residence, and it was alleged that the child was posthumous; but the decision did not proceed on these specialties, and they seem not to be material.²

42. An illegitimate child follows the settlement of its mother, though it may have been born, and in childhood have resided, elsewhere.³ In a case where the mother had never acquired a settlement by her own residence in any parish, the bastard's settlement was held to be in a parish in which its mother, when in pupilarity, had

¹ *Crieff*, 19th July 1842, D. See p. 65.—The Lord Ordinary says in his note, "It is denied that a lawful mother can acquire a settlement for her child." The Lord Ordinary "does not hold this to be law." "The weight of authority, and still more of principle, is that the surviving mother, whose fortunes the children follow, and whose industry benefits the parish she resorts to, procures a settlement not only for herself, but for her young offspring."

LORD JUSTICE CLERK.—"I concur in the view of the Lord Ordinary." "I don't see that the residence of the parent of an illegitimate child should be different in its effect from the residence of the parent of a legitimate child. The right equally arises to the child from the parent. Say that a widowed mother comes to a parish and contributes to the 'poors' rates, &c. and gives the parish all the benefit of an industrial, it may be of a wealthy, residence, are her children to be told at her death that this residence is of no avail! Where there has been industrial residence by a mother, I cannot see any principle for refusing to her legitimate children the benefit of such industrial residence, when in the case of the residence of a father, there would have been no doubt."

LORD MONCRIEFF.—"I am inclined to be of the same opinion. But it is not exactly the same case as to a legitimate and illegitimate child. I rather think, (on the case of *Coldingham*,) though it is a nice question, that the residence of the mother should give the child a settlement."

LORD MEDWYN.—"I never had much difficulty, being of opinion that the residence of the mother should give the child the benefit of that residence, so far as it has been sufficient for acquiring a legal settlement."

³ See also case of *Isabella Tran*, *Sheriff Court Decisions*, No. 17, p. 240.

² *Rescobie*, 28th November 1801, F. C. See p. 61, No. 53. *Gladsmuir*, 11th June 1806. *Mor.* No. 5, Ap. Poor. See p. 62, No. 57.

 III.—SETTLEMENTS BY PARENTAGE.

acquired a settlement by parentage through her father's residence, at a time when she did not live with him;¹—and where the mother was herself a bastard, her bastard child's settlement has in similar circumstances been determined by that of its maternal grandmother.²

43. The parish of the father's settlement is not liable for the support of a bastard, even although the pater-nity has been ascertained by a decree for aliment against him.³

44. A curious question, arising from a combination of settlements by parentage and marriage, occurs on the marriage of the mother of an infant bastard. As the mother's settlement is thereby immediately transferred to that of her husband, it would seem, though it cannot be stated with confidence, that the bastard's settlement, following her's, attaches through her to her husband's parish.⁴

45. The same principle may perhaps apply to the case of a lawful child, if its previous settlement has been derived from and dependent on a settlement acquired by its mother by residence after the father's death,⁵ though, in other circumstances, it would seem more doubtful.

46. An idiot follows the changes of its parents settlement, even after it reaches fourteen years of age, and so long as it remains an unemancipated inmate of the parental home.

47. Children, born in bastardy, whose parents subsequently marry each other, are thereby legitimated, and their settlement is thus transferred to the father's parish. The legitimation in such a case dates from the child's birth, which might possibly be held to affect questions of relief in regard to the child's maintenance, prior to the marriage.

¹ Lasswade, 6th March 1844, B. M. Y. See p. 66, No. 74.

² McGregor, No. 5, Sheriff Court Decisions, p. 215.

³ Edinburgh v. Brown, 11th June 1806, Mor. 6, Ap. Poor. See p. 62, No. 57.

⁴ Dunlop, 385,—Parish of Kinfauns, No. 7, Sheriff Court Decisions, p. 219.

⁵ Crieff *ut supra*, p. 17.

IV.—SETTLEMENTS BY BIRTH.

IV.—SETTLEMENTS BY BIRTH.

48. The parish of birth is never liable during the subsistence of another settlement acquired by marriage, residence, or parentage; but a pauper who has no other settlement has recourse on the parish where he was born.

49. It has been contended that the acquisition of a different settlement effects a complete and perpetual liberation of the settlement of birth, so that on the loss, for example, of an industrial settlement, by non-residence, under the new law, the prior settlement of birth should not revive.¹ This, however, does not appear to be well founded.

50. But if, during the residence of the parents in a parish, the mother goes into a neighbouring parish for a mere temporary purpose, and there happens to be delivered, returning again immediately to the former parish, it would seem that the parish of the parents' residence at the time, though they had no settlement there, is to be regarded, in a question of settlement, as constructively the parish of birth, though not so actually.

51. This appears to be the principle of decision in cases where the mother's removal was fraudulent, or for the purpose of secrecy,² or of resort to a charitable maternity hospital,³ or where the birth was casual while the mother was passing through a parish.⁴ But, in such a case, if neither the settlement nor the residence of the parents can be discovered, the parish of casual birth seems to be liable,⁵ at least till the parental settlement shall be ascertained.

V.—SETTLEMENTS BY MARRIAGE.⁶

52. Wherever a woman has her settlement, and whether it be constituted by birth, parentage, or residence,

¹ Watt, No. 13, Sheriff Court Decisions, p. 231. ² Dalmellington, 22d Jany. 1822. See p. 64, No. 63. ³ Jane Barnett No. 24, Sheriff Court Decisions. See p. 247. ⁴ Fulton, Sheriff Court Decisions, No. 37, p. 276. ⁵ Mary Neill, No. 26, Sheriff Court Decisions, p. 251.

V.—SETTLEMENTS BY MARRIAGE.

it is at once suspended by her marriage, and she thereby acquires the settlement of her husband.

53. Her legal domicile and settlement are thenceforth inseparable from his during the subsistence of the marriage,¹ even though he should desert her, or quit the kingdom, or be a foreigner.² On the same principle, her maiden settlement is equally suspended, even though her husband should have no known settlement in Scotland. Nor can she acquire a settlement for herself or her children, by residence apart from him, during his life.³

54. It seems to be held, that on the husband's death, his settlement continues to be that of his widow, until she acquire a new settlement by residence, or by a second marriage.⁴ Where the widow continues to reside in the same parish after the husband's death, it would be equitable that she should be permitted to add the period of her residence prior to his death to its duration after that event, if that be required to eke out the term necessary for her own acquisition of a settlement by residence. But the question has not yet been tried, and it is very doubtful whether such would be the decision in point of law.

55. An opinion has been expressed, that in the event of a divorce, the woman loses her husband's settlement, and that her maiden settlement revives.⁵ This would follow if a divorce annulled the marriage *ab initio*, an effect which it is unnecessary to say it has not. And hence it may be doubted whether there is sufficient reason for distinguishing, in questions of settlement, between a dissolution of the marriage by death, and its dissolution by a Court of law. The forfeiture of rights which attaches to divorce for desertion (and to divorces of that kind alone) is the result of a statutory enactment,⁶

¹ French, 13th June 1800. *Fac. Coll. Mor. v. Forum competens*. App. No. 1.

² Pennicuck, 8d March 1813, F. C. See p. 63, No. 60.—Dunlop, 382; Bell's Dictionary, voce Poor—Ivory's Erskine, p. 34, note 22.

³ Ibid.

⁴ Dunlop, 382.

⁵ Ibid.

⁶ 1573, Cap. 75.

V.—SETTLEMENTS BY MARRIAGE.

whose provisions could not possibly include rights in regard to parochial relief, because it was enacted before a compulsory provision for the poor was introduced.

56. The application of these principles, under the new law of settlement by residence,¹ may lead to some difficulty. Thus, where a husband who has acquired by residence a settlement for himself, and his wife and children, deserts them, and remains away for five years, he undoubtedly forfeits his own settlement in that parish. Does he by his absence forfeit the settlement for them also, though they, during the whole period of his absence, have resided continuously in the parish? or is the forfeiture personal to himself? On the one hand, it may be said, that although the acquisition by the children of their settlement was dependent on his; yet, having acquired it, it is, as the Court has emphatically declared, their settlement “in their own right,”² and may continue, although his should cease; for the settlements acquired by them through him are not lost or interrupted by his death,³ or by his gaining another settlement while they are living apart, after they have reached the years of puberty.⁴ Moreover, the provision is applicable only to those whose settlement has been *acquired by residence*. It is a disqualifying provision, and to be strictly construed; but here the settlement, though flowing from his residence, was acquired *to them*, not by residence, but, in the one case, by marriage, in the other, by parentage; and the intention of the enactment is limited to those who fail in their own persons to fulfil its condition of continued residence. It may be urged, on the other hand, that it is contrary to every principle of law to separate the settlement of the wife from that of the husband, of infant children from that of their parent; that

¹ See p. 147. ² Dicta of the Judges in *Lasswade*, 6th March 1844.

—B. M. Y. See p. 66, No. 73, and p. 6, note 2.

³ *Dunlop*, 384.

⁴ *Lasswade*, *ut supra*.

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it was decided under the old law that the desertion of the husband, his having no settlement, even his abandonment of the kingdom, could not suffice to enable a wife during the subsistence of the marriage, or children under 14 years of age,¹ to acquire a settlement by residence apart from the husband and father; or even in the case of the wife to revert to her maiden settlement;—that what they were under a legal incapacity to acquire, they must, by parity of reason, be under a similar incapacity to retain, by separate residence;—that, whatever name may be given to the privilege by which the benefits of the husband's residence are communicated to his wife and children, their claim rests substantially on a settlement *acquired by residence*, and consequently falls within the operation of the father's forfeiture; and that to hold it otherwise would be to recognize the dwelling-place of a wife *vestita viro*, and of children in pupillarity, as material in the decision of a question of settlement, a principle which has been uniformly repudiated in the decisions.—Fortunately this question is divested of much of the hardship which might otherwise have attended it, by the provision of the new law, under which the destitute are to be provided for wherever they apply, whether they have a settlement or not; but like other questions of a kindred nature, it must remain in uncertainty till settled by an authoritative judgment of the Court.

CHAPTER V.

ASSESSMENTS.

57. The Parochial Boards have power to levy assess-

¹ French *ut supra*, p. 20. Pennicuick *ut supra*, p. 20. Howie, 25th January 1800, F. C. See p. 61, No. 50. Lasswade, 6th March 1844, B. M. Y. See p. 66, No. 73.

ASSESSMENTS.

ments in order to raise the funds requisite for the relief of the poor.¹

58. These include the expense of providing for the occasional² as well as the permanent poor, also contributions to public infirmaries, dispensaries, or lying-in hospitals, lunatic asylums, or asylums for the blind or deaf and dumb.³ The assessment may include, also, the cost of medicines, medical attendance, cordials, clothing, and education, for the poor;⁴ and all necessary and proper expenses connected with the management and administration.⁵ The salaries of inspectors, collectors, and other necessary officers, the cost of removing poor persons, and of necessary prosecutions and law suits, are proper charges on the assessment.

59. But where a Parochial Board engages in law suits without just or reasonable cause, or its proceedings are vitiated by gross irregularities, the expenses thus improperly occasioned will not be allowed to burden the funds, and will be laid on the individuals by whose fault they are occasioned.⁶

60. The expense of building a poor-house is also, by the recent act, a proper charge on the assessment "in every case in which a parish or combination of parishes contains more than five thousand inhabitants," according to the enumeration of the population last published by authority of Parliament, at the time when the Parochial Board takes the question of erecting a poor-house into its consideration.⁷ It had been decided in the case of *Scot*, under the old law, that the cost of *maintaining* a poor-house is a proper subject of assessment.⁸ Mr Dunlop, indeed, quotes this case as an authority for charging the assessment with the expense of *building* a house for the reception of the poor;⁹ but it does not ap-

¹ See p. 119.² See p. 138.³ See p. 137.⁴ See

p. 139.

⁵ See p. 119.⁶ Gammell, 26th Nov. 1816. See

p. 69.—Dunlop, 438.

⁷ See p. 133, 134, 135.⁸ *Scot*,

19th Jan'y. 1773—M. 10, 577. See p. 68, No. 150.

⁹ Dunlop, 438.

ASSESSMENTS.

pear from the report that that question arose in the case.

61. Several methods of assessment are sanctioned by the recent statute, the selection being left to the Parochial Boards, subject to the approval of the Board of Supervision :

1. One-half of the entire amount to be levied may be imposed on the owners, and the other half on the tenants or occupants of all lands and heritages within the parish or combination, rateably according to the annual value of such lands and heritages.¹
2. One-half of the entire amount may be imposed on the owners of land and heritages, according to the annual value thereof, as under the first method ; and the other half upon the " whole inhabitants," according to their means and substance.²
3. The entire amount may be imposed as an equal percentage on the annual value of lands and heritages, and on the estimated annual "*income from means and substance*" of the whole inhabitants.³
4. If, on 4th August 1845, an assessment for the poor was imposed in any parish, according to the provisions of any local act, or according to any established usage, it is lawful for the Parochial Board, with consent of the Board of Supervision, to continue that method of assessment.⁴

62. When the method of assessment has been resolved on in any parish, it cannot be altered without the sanction of the Board of Supervision.⁵ Nor can any two of these methods be mixed up with each other, and applied at the same time in the same parish. But whatever be the mode of assessment, the Parochial Board may exempt any person, or class of persons, to such an extent as

¹ See p. 119.

² Ib.

³ See p. 120, and foot-note.

⁴ See p. 121.

⁵ See p. 120.

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may seem proper and reasonable, on the ground of inability to pay.¹

63. The phrase “means and substance,” is rather obscure, and has never been authoritatively explained. In estimating its extent no account can be taken of lands and heritages situated in Great Britain or Ireland;² but all personal property of whatever nature may be included, whether invested in the parish or not. No person is liable to be assessed on his means and substance, unless the estimated annual value thereof, in whole, shall exceed L.30.³ Clergymen, however, are liable to be assessed in respect of their stipends;⁴ and various special rules are enacted for the case of persons resident in more than one parish, or resident in one parish and carrying on trade or business in another. For these, reference is made to the act itself.⁵ Heritable bonds are considered liable to assessment, feu-duties not; ground annuals doubtful; and professional incomes are charged in practice, though their liability has never been determined.²

64. In lands and heritages, are included “all lands, fishings, fresh waters, ferries, quays, wharfs, docks, canals, railways, mines, minerals, &c., &c., and all buildings and pertinents thereof.”⁶ The word “owners” applies to those who are “in the actual receipt of the rents and profits of lands and heritages.”⁷ And wherever houses have been or shall be built by the tenant of any land held under a building lease, the tenant and his heirs or assignees in such lease are to be deemed the owners of the houses.⁸

65. Canals and railways passing through more than one parish are to be assessed in the proportion of their annual value, answering to the distance which they traverse in each parish. But it has been recently decided, that house property belonging to, and occupied by, a canal company for the uses of their canal, is assessable

¹ See p. 125.

² See p. 120.

³ *Ib.* Sect. 48. See p. 128.

⁴ *Ib.* Sect. 49. See p. 128.

⁵ *Ib.* Sect. 47. See p. 127.

⁶ *Ib.*

Sect. 1. See p. 98.

⁷ *Ib.*

⁸ *Ib.* Sect. 44. See p. 126.

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in poor rates exclusively in the parish where such house property is situated ; and the rent of such houses is to be deducted from the general revenue or value of the canal before apportioning that revenue or value among the various parishes through which the canal passes, with a view to assessment. It has also been decided, in a parish where the poor assessment is levied one half from the heritors and the other half from the occupants, that the proprietors of a canal, who use their own line for profit and levy its tolls, are liable in assessment both as occupants and as heritors : And that, in calculating the rental on which they ought to be assessed, a deduction must be made from their annual revenue on account of the capital embarked in their carrying trade, and also on account of tenants' profits.¹ The same principles apply to the case of a Railway Company.

66. The annual value of lands and heritages is to be estimated according to the rent at which one year with another the lands and heritages might, in their actual state, be reasonably expected to let from year to year. But deduction is to be made for the probable annual average cost of repairs, insurance, and other expenses, if any, necessary to maintain the lands and heritages in their actual state, and all rates, taxes, and public charges payable in respect of them. Mines and quarries are not to be assessed unless they have been worked during some part of the year preceding the day on which the assessment shall be ordered to be levied.² The owners and occupiers of lands and heritages are not liable to be assessed in respect of such lands and heritages in more than one parish or combination.³

67. In an assessment levied under the first method, (half on landlords and half on tenants,) the Parochial Board, with the concurrence of the Board of Supervision, may distinguish the lands and heritages into two or more

¹ Anderson, 14th January, 1847. Jurist, 19, 187. See p. 73 and 74, Nos. 104, 106, 107.

² Sect. 37. See p. 123.

³ Sect. 46. See p. 126.

ASSESSMENTS.

separate classes, according to the purposes for which such lands are used and occupied; and may fix a different rate of assessment on the tenants or occupants of each class.¹ But this distinction does not affect the owners;—although their half of the assessment may be levied from the tenants, who are entitled to recover it from the owners or retain it out of their rents.²

68. It is thought that ministers are now liable to assessment on their manse and glebes, both as owners and as occupants³; but that superiors are not liable to be assessed on their feu-duties.³ Crown property is not liable unless it is the subject of beneficiary possession by any of the lieges, or has been acquired from a subject. In the latter case buildings and ameliorations executed for the public service must be left out of view in estimating its value, which must be reckoned according to the value of its solum, as unoccupied ground, taken at the date of the assessment.⁴

69. It is thought, but has not been decided, that the parish church, church-yard, and school-house, poor-houses, and mortifications exclusively for the use of the poor, are not liable to assessment; and that dissenting churches are not liable, except where let so as to form a source of revenue.⁵ Highways are exempt,⁶ and buildings used exclusively for scientific purposes by any society which derives no profit from them to its funds.⁷

70. When the method of assessment has been fixed, and the Parochial Board has ascertained the sum to be raised for the year or half-year then ensuing, the farther proceedings in the levying of the assessment are at once simple and arbitrary. “The Parochial Board shall

¹ Sect. 36. See p. 122.

² Sect. 43. See p. 125.

³ South

Leith, 12th Nov. 1833. See p. 72, No. 98, and p. 83, No. 149.

⁴ Milroy, 21st Nov. 1815, F. C. See p. 69, No. 85. *Ordnance v. North Leith*, 14th Feb. 1829—7. S. 416. See p. 71, No. 93.

⁵ Dunlop, 412.

⁶ Lord Ordinary, in case of *Anderson*, 7th March, 1839. *Dunlop's Reports*, i. 648. See p. 73, No. 103.

⁷ See p. 37, l. 30.

⁸ Sheriff Court Decisions, No. 9, p. 225.

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make up or cause to be forthwith made up, a book containing a roll—

- (1.) Of the persons liable in payment of such assessment, and
- (2.) Of the sums to be levied from each of such persons.
- (3.) Distinguishing the sums assessed in respect of ownership or occupancy, or means and substance.

And the book or roll so made up shall be the rule for levying the assessment for the year or half-year then ensuing.”¹ And “the collector shall intimate to each person the amount of the sum to be levied from him, and the time when the same is payable.”²

71. No provision appears to be made for hearing the parties assessed, nor for regulating the preliminary enquiries, nor for establishing any simple method of adjusting differences, or of appeal—omissions which are deeply to be regretted, and which in practice give rise to continual heart-burnings and dissatisfaction.

72. It is, however, permitted to the Parochial Board to correct errors, omissions, or surcharges;³ and no assessment is void or affected by reason of any mistake or variance in the christian or surname, or designation, of any person chargeable therewith.⁴

73. All assessments may be recovered summarily in the same manner as the land and assessed taxes, or may be pursued for at the inspector’s instance, by action in the Sheriff small debt court; and in cases of bankruptcy, are preferable to all other debts of a private nature.⁵

74. Parties aggrieved by an assessment must seek relief by advocacy or suspension in the Court of Session; but the Court will not entertain a general declaratory action by an inhabitant of a parish, as to the rule according to

¹ 8 and 9 Vict. 83, 38, 40. See p. 123, 124.
p. 124.

³ Ib. 40. See p. 124.

² Ib. 39, 40. See

⁴ Ib. 51. See p. 128.

⁵ Sect. 88. See p. 160.

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which he ought to be assessed.¹ A suspension of a charge by a collector for payment of poor rates, on the ground that they had been imposed on an unjust principle, has been sustained as a competent mode of trying the question, the suspender undertaking to pay his share in the meantime.²

75. But if the objection taken be merely to the share of the assessment laid on particular individuals, the Court will not interfere by suspension, so as to stay the levying of the assessment in the meantime, unless a case of wilful and corrupt partiality be made out.³

76. An action of reduction, and for repetition, would, it is thought, be sustained on the ground of error alone.

77. A rate-payer has been found entitled to demand inspection of the assessment roll, in order to ascertain whether he was rated fairly in proportion to others.⁴

CHAPTER VI.

OF RELATIONS AND OTHERS PRIMARILY LIABLE.

78. There are certain relations who are primarily liable to support the indigent. Their obligation is not founded on the statutes, but arises at common law.

79. The father and mother of illegitimate children are liable to support their offspring, so long as from infancy, disease of mind or body, or other causes of the same nature, the children are unable to maintain themselves. This obligation is said to arise *ex delicto*, and does not seem to extend beyond the immediate parents;—nor is the bastard liable, in return, to aliment them, should they become destitute. It has even been held that the heir who has succeeded to an estate from the bastard's

¹ Boyd, 23d Feb. 1827, 5 S. 413. See p. 70, No. 92.
² Ford, 31st May 1838, 16 S. 1072. See p. 72, No. 100.
 Dec. 1800—M., App. Poor, 3. See p. 69, No. 84.

³ Crawford,

⁴ Ross, 16th

⁴ Ib. See p. 68,

No. 83.

OF RELATIONS AND OTHERS PRIMARILY LIABLE.

father, is not under a legal obligation to maintain the bastard.¹ But there is one case, the marriage of the mother to a person other than the bastard's father, in which an exception to these rules has been admitted; the aliment of the bastard as a debt of the mother, becoming on her marriage a debt of the husband.² This appears to proceed on the legal identity of person, and special community of goods, between husband and wife, but it is not easy to reconcile it with the principle on which the mother's obligation has been supposed to rest,—because a husband is not ordinarily liable for the consequences of his wife's delicts.³

80. In the case of legitimate children, on the other hand, the mutual obligations of support arise *ex pietate et jure sanguinis*, and extend to the remotest ascendants and descendants.

81. The maintenance of legitimate children, when destitute, falls first on the father, or, in case of his death or disability, on the mother; then on the pauper's grandfather, and so upwards on the paternal ascendants; after them, the maternal ascendants are liable.

82. In one case, the grandfather was found liable notwithstanding the father was alive, and in good circumstances, he being settled abroad.⁴

83. It has been held, in a question with the child, that where the parent has, at his death, made ample provision for the child, no claim can arise against his representatives by the subsequent poverty of the child.⁵ This rule was enforced in a later case, where the Lord Ordinary held, and it was confirmed by the Court, that "no claim for aliment can lie against a father or his trust-estate at the instance of a son, in possession of all his mental and bodily faculties, who had been educated and set up in business by the father, and received ad-

¹ P. 55, No. 14.
Dec. No. 7, p. 219.

² Hume's Reports, 217.—Kinfauns, Sh. Court
³ Ersk. 1 6, 24.

⁴ P. 56, No. 23.

⁵ P. 58, No. 35.

RELATIONS AND OTHERS PRIMARILY LIABLE.

vances from him to the extent of not less than £10,000.”¹ But, however salutary this rule may be in questions between the parties themselves, or those in their right, it can scarcely be carried so far as to release the father’s heirs from a claim of relief by the parish, should such a question arise.²

84. Lawful children are reciprocally bound to support their parents and other paternal and maternal ascendants, when destitute, or unable to maintain themselves.

85. Descendants, it is thought, are liable before ascendants.

86. A father is bound to support his son’s wife during the son’s life, if the son be unable to maintain her, but not otherways, nor after the son’s death.³ A claim for aliment up to the time of the son’s death, may however be enforced after his death.⁴

87. In one case⁵ where the son had gone abroad, and his wife refused to accompany him, the father was assoilized from an action for aliment at the instance of the wife. But it would rather seem (though it is not clear from the report,) that this proceeded on the ground that she had not made out her inability to maintain herself, and a child with whom she was burdened. And there appears to have been no averment that the husband, though abroad, was unable to provide for them.

88. A husband is bound to support his wife, and though there is no decision to that effect, it would seem that a wife is bound to maintain her indigent husband if she have a separate estate. A question has been raised, but not decided, whether a daughter’s husband is bound to aliment her father, she having no separate property.⁶

89. Brothers, sisters, and other collaterals, are not under any legal obligation, on the ground of relationship, to maintain each other, nor is a step-mother liable

¹ P. 54, No. 12, and p. 58, No. 33.

² P. 59, No. 43.

³ P.

57, No. 27.

⁴ P. 57, No. 27. Pagan, p. 59, No. 40.

⁵ P. 52,

No. 6. See also p. 56, No. 23.

⁶ P. 60, No. 44.

RELATIONS AND OTHERS PRIMARILY LIABLE.

to aliment a step-child.¹ The case of a step-father is somewhat different.—(See No. 79, p. 30.)

90. But a person succeeding to the property of another, is bound, to the extent to which he is *lucratus*, to provide for all those who could have maintained a claim against the party to whom he has succeeded;² and the liferenters of lands are bound to aliment the fiars.³

91. A father cannot be compelled to allow his children a money aliment, if he be willing to take them into his own house, and support them as members of his family; unless indeed he should illtreat them, which will found a claim for a separate allowance. The same rule appears to apply to other ascendants,⁴ who, so long as they keep house, are bound to afford their offspring the same entertainment as they take to themselves,⁵ unless their state of health, or any other peculiarity in their circumstances, makes it impossible to do so.⁶

92. A child, however, is bound, if able, to afford his parents a separate maintenance; but if unable, it will be sufficient for him to receive them into his house, and there maintain them.⁷

93. A Parochial Board which is in the course of affording support to a pauper, has an unquestionable title to maintain a claim of relief, for bygone advances and future maintenance, against any party who is liable by law to aliment him.⁸ But if no claim has ever been made on the parish, the risk of the pauper becoming burdensome, will not give the parochial authorities a title to pursue.⁹ A pauper having such a claim is bound to follow forth an action against his relatives, but is entitled to temporary support during its dependence, without being placed on the permanent roll.¹⁰

¹ P. 60, also p. 58, No. 33. ² P. 58, No. 32. ³ 1491, c. 25, p. 55, No. 15. ⁴ P. 59, No. 41, also p. 57, No. 30. ⁵ Ersk. 1, 6, 56; Dunlop, 372, 3. ⁶ P. 58, No. 37. ⁷ P. 57, No. 31. ⁸ P. 56, No. 19.—New Act, § 71, (see p. 143,) 77, (see p. 151,) 80, (see p. 156,) under all of which the title of the parish is made to depend on the party having become actually chargeable. ⁹ P. 57, No. 29. ¹⁰ P. 53, No. 8.

ANALYSIS OF THE LEADING PROVISIONS OF THE OLD STATUTES AND PROCLAMATIONS* AS TO THE POOR.

I.—VAGABONDS—THEIR DESCRIPTION AND PUNISHMENT.

1579, c. 74.—All above 14 and below 70 years of age, who shall “be taken wandering and misordering themselves;” all idle persons “ganging about, using unlawful plays,” &c.; Egyptians and seers, and “all persons being haill and starke in bodie and abill to worke, alleging them to have bene herried or burnt;” “uthers nouthur havand land nor maisters,” nor lawful occupation, who “can give na reckoning how they lawfully get their living;” and all sangsters, &c., “all common labourers, being persons able in body, living idle and fleeing labour,” &c. &c., shall be taken, adjudged, esteemed, and punished, as strang beggars and vagabonds. 5 10

They are to be apprehended, imprisoned, and tried within six days, and on conviction to be adjudged to be scourged, &c.; and if convicted a second time, to be punished as thieves. While imprisoned they are to be maintained by the parishes where apprehended; “allowing to each person ane pund of ait bread, and water to drink.” See New Act, p. 156, lines 1 and 20. See also p. 12, 2^d. 15

HARBOURERS OF VAGABONDS.—1579, c. 74.—Any person harbouring such vagabonds to be fined not more than L.5 (Scots) to the use of the poor. 20

* The proclamations were ratified by the Acts 1695, c. 43; 1696, c. 29; 1698, c. 21.

II.—PROVISION FOR THE POOR.

1579, c. 74.—“ And seeing charity wald that the pure, aged, and impotent persons, suld be as necessarily provided, as the vagabonds and strong beggars repressed, and that the aged, impotent, and pure people suld have lodging and
 5 abiding places :” it is ordained, that inquisition be taken of “ all aged, pure, impotent, and decayed persons” born within each parish, and who had “ their maist commoun resort in the said parish the last seven years byepast—quhilkes of necessitie mon live bee almes,”—and that all such return
 10 to their parishes and there settle themselves, under pain of being treated as vagabonds.

This act also appoints a “ catalogue” to be made of their names, birthplaces, whether married or not, and if so, when, and by whom ; their children, where baptized, their own and
 15 their children’s trade, whether diseased or able in body, and what they get commonly in the day by their begging, and to see what “ such as mon necessarilie live by almes,” may be made content, of their own consent, to accept daily to live unbeggand ; and accordingly a conclusion to be
 20 formed “ quhat their needful sustentation will extend to every week,” that it may be raised by assessment.

1661, c. 38,—Declares that no persons shall be received into the list of the poor, “ who are any way able to gain their own living,” and appoints lists to be made of “ such
 25 poor, aged, sick, lame, and impotent inhabitants of the said paroch, who (of themselves) have not to maintain them, nor are able to work for their living ; as also, all orphans, and other poor children within the said paroch, who are left destitute of all help.” The overseers “ to provide
 30 them a convenient house for their dwelling either apart or together.”

1663, c. 16,—Provides that “ vagabonds who shall be found begging, or who *being masterless and out of service*, have not wherewith to maintain themselves by their own
 35 means or work,” may be seized by authority of the magistrates and set to work in manufactories, and that the parishes of their birth, or where they had any residence,

haunt, or most resort, for *three* years immediately preceding their apprehension, "who thereby are relieved of the burden of them," shall make payment, to the persons who receive them into their employment, of 2s. Scots per diem for the first year after their apprehension, and 1s. per diem 5 for the next three years thereafter, one half to be paid by the heritors, the other half by the possessors and inhabitants, "according to their means and substance."

1672, c. 18,—"*For establishing correction-houses for idle beggars and vagabonds*," appoints correction-houses to 10 be built "wherein such poor people may be set to work," and allows the "contributions and allowances for maintaining of the poor," appointed in 1663, c. 16, to "be applied for the use of the said correction-houses, whereby they shall have two shillings Scots for ilk poor person per 15 diem that shall be sent to them and entertained and bred by them for the first year, and twelve pennies Scots per diem for the space of three years thereafter, during which they shall entertain and educate them, together with the profit arising from the labour and work of the said poor 20 persons for seven years thereafter, which contributions are to be paid by the parishes relieved of the said poor in manner contained in the said act: And to the effect it may be known what poor persons are to be sent to the said correction-houses, and who are to be kepted and entertained 25 by the contributions at the parish kirks," lists are to be made up of the poor, condescending on "their age and condition, if they be able or unable to work, by reason of age, infirmity, or disease, and where they were born, and in what parishes they have most haunted during the last 30 *three* years preceding the uptaking of these lists. And such poor persons as are sent to the correction-houses "shall have a quarter's allowance sent along with them, with clothes upon them to cover their nakedness, and the said allowance to be paid quarterly thereafter, by way of ad- 35 vance."

Proc. 11th August 1692,—Appoints the heritors and session to make lists of all the poor within their parish, and to cast up the "quota of what may entertain them ac-

ording to their respective needs," and to assess therefor. "And such poor as are not provided of houses by themselves or by their friends, the heritors are to provide them with houses on the expense of the parish."

III.—ADMINISTRATION.

5 1579, c. 74,—Gives the administration of the poor to the provost and bailies within burgh, and the justices in landward parishes. The sheriffs to see the act put to due execution.

1597, c. 272,—Transfers the power of executing the
10 act 1579, "in landward," "to the particular session of the kirk."

1672, c. 18,—Associates the heritors with the kirk-session in the administration of the poor-laws.

Proc. 11th August 1692,—Appoints half-yearly meet-
15 ings of the heritors, ministers, and elders, of every parish, one on the 1st Tuesday of February, and the other on the 1st Tuesday of August. "And if there be any MORTIFICATIONS already, or if any hereafter shall accrue to any parish, the same shall be applied by the advice of the heri-
20 tors and elders to the use aforesaid, but without diminution of the stock of the said mortifications." See also New Act, sect. 30, p. 117, l. 18, and p. 107, l. 30, p. 111, l. 25.

IV.—ASSESSMENT.

1579, c. 74.—"Then be the gude discretions of the said
25 provests, bailies, and judges, in the parochines to landwert, and sik as they shall call to them to that effect, to tax and stent the haill inhabitants within the parochin, according to the estimation of their *substance*, without exception of persons, to sik weeklie charge and contribution as sall
30 be thocht expedient, and sufficient to sustaine the saidis pure people; and the names of the inhabitants stented, togiddir with their taxation to bee likewise registrate," with power to appoint overseers and collectors, in each parish,

“for the hail year.” “And at the end of the year that the taxation and stent roll be always made of new, for the alteration that may be throw death, or be incres or diminution of mennes gudes and substance.”

1597, 280.—“It shall not be leasum to the provost 5 and bailies of burghs, nor na stenters within the same, to stent ony persons therein, according to their livings and rents lyand outwith burgh; but only according to their rents and halding within burgh.”

1663, c. 16.—Authorises an assessment for the purpose 10 of putting down vagabonds, the one half thereof to be paid by the heritors, and the other half by the possessors and inhabitants, according to their means and substance.

Proc. 11th August 1692,—Appoints the heritors, ministers, and elders (in landward parishes), to cast the quota 15 of what may entertain the poor according to their respective needs, “the one half upon the heritors, and the other half upon the householders of the parish.”

Proc. 29th August 1693.—“We, with advice foresaid, require and command the magistrates of our BURGHS ROYAL, 20 to meet and stent themselves conform to such order and custom used and wonted in laying on stents, annuities, or other public burdens, in the respective burghs, as may be most effectual to reach all the inhabitants. And the heritors of the several vacant parishes, likewise, to meet and 25 stent themselves, for the maintenance of their said respective poor; and to appoint the ingathering, uplifting, and applying of the same, for the uses foresaid, sicklike, and in the same manner as the heritors and elders are appointed by our former proclamation.”

30
6th and 7th Vict. c. 36.—“No person or persons shall be assessed or rated, or liable to be assessed or rated, or liable to pay to any county, burgh, parochial, or other local rates or cesses, in respect of any land, houses, or buildings, or parts of houses or buildings belonging to any society 3 instituted for purposes of science, literature, or the fine arts exclusively, either as tenant or as owner, and occupied by it for the transaction of its business, and for carrying into effect its purposes, provided that such society shall be

supported wholly or in part by annual voluntary contributions, and shall not, and by its laws may not, make any dividend, gift, division, or bonus in money, unto or between any of its members ;” and provided also the society
 5 shall obtain a certificate from the Lord Advocate, or his depute appointed to certify the rules of Friendly Societies.

See New Act, p. 119 to p. 128.

V.—SETTING THE POOR TO WORK.

1579, c. 74.—“ And gif the aged and impotent persons, not being so diseased, lamed, or impotent, but that they
 10 may work in some manner of work, sall be by the overseers in ony burgh or parochin appointet to work, and zit refuses the same, then first the refuser to be scourged and put in the stockkes, and for the second fault to be punished as vagabonds, as said is.”

15 Any of the lieges may take into their service beggars’ children above the age of 5 and below 14, and retain them till 24 in males, and 18 in females.

1661, c. 38.—If any of the enrolled poor shall “ miscarry themselves or shall refuse, *being able*, to work any
 20 manner of work that they are able to perform,” they are to be punished at the discretion of the Justices, and if they continue in such miscarriage, to be dealt with as vagabonds.

1672, c. 18,—Authorises correction-houses to be established, and requires the masters thereof to “ put and hold the said poor people to work as they shall see them most
 25 capable and fit, and to correct them in case of disobedience.”

Proc. 11th August 1692.—“ And if any of the poor of the parish are able to work, the heritors of the parish are
 30 hereby authorised and required to put them to work, according to their capacities, either within the parish, or to any adjacent manufactory, as they shall find expedient, furnishing them always with meat and clothes.”

Appoints correction-houses to be established.

35 See also New Act, p. 133 to 137, and Decisions, p. 83, No. 150 ; also Sheriff Court Decisions.

VI.—CHURCH COLLECTIONS.

The proclamation, 29th August 1693, ordains that half of the sums collected at parish churches, and dues received by the kirk-session, shall be paid over into “the several funds for support of the poor.”—See Decisions, p. 82, No. 148, and New Act, p. 130, l. 6. 5

VII.—REMOVAL OF SCOTTISH POOR FROM ENGLAND.

8th and 9th Vict. 117, sect. 4.—If “any person born in Scotland, not settled in England, become chargeable to any parish in England, by reason of relief given to himself or herself, or to his wife, or to any legitimate or bastard child, such person, his wife and any child so charge- 10 able may be removed to such of the following ports as are nearest the respective places where such persons were born or have resided, or to places not being ports, but being as near as such ports to the respective places where such persons were born or have resided, unless where any such per- 15 sons consent to be removed to any other port or place in Scotland, viz. :—

Dumfries.	Glasgow.	Aberdeen.	
Ayr.	Oban.	Dundee.	
Greenock.	Inverness.	Edinburgh.”	20

Sect. 6.—“And be it enacted, That if any board of guardians of any union in Ireland, or the heritors and kirk-session or borough magistrates in Scotland, think themselves aggrieved by any removal of any poor person under the provisions of this act, and if they forward to the Poor- 25 Law Commissioners a statement of the case, and of any grounds for concluding that such poor person is settled in any parish in England, or was not in law liable to be removed to Scotland, as the case may be; and if they or any persons on their behalf give good security in England to 30 the said commissioners for the payment of all costs which may be incurred in any appeal against the warrant for the removal of such poor person, such commissioners, if satis-

fied that it will be expedient so to do, may appeal, on behalf of the persons so aggrieved, to the Court of Quarter-Sessions holden for the county or borough from which such removal was made, held at any time within six months
5 after such removal was completed; and such commissioners shall, at least twenty-one days before the holding of such session, send by post or otherwise, to the guardians or overseers, on whose application such warrant was obtained, notice in writing, purporting to be signed by their secretary,
10 or one of their assistant secretaries, of their intention to appeal against such warrant, containing a statement in writing of the ground of such appeal; and such Court of Quarter-Sessions shall hear and determine such appeal; and if the warrant of removal is reversed by such court, the
15 guardians or overseers on whose application the same was obtained shall pay the costs, and the necessary expenses and charges incurred by or on account of such heritors and kirk-session, or borough magistrates, respectively, in conveying the poor person removed under the same back to
20 such parish; and if they refuse or neglect to pay the same within seven days after demand thereof, the persons on whose behalf such appeal was brought, or any person authorised by them, may recover the same as penalties and forfeitures: Provided always, that the said guardians or
25 overseers may at any time after such notice of appeal give or send by post notice in writing under the hands of any two or more of them to the said commissioners, that they abandon such warrant, and thereupon such warrant shall be of no effect; and such guardians and overseers shall pay
30 to the persons on whose behalf such notice of appeal was given, or to some person authorised by them, the expenses incurred by or on account of such persons by reason of such warrant, and in any proceedings consequent thereon, and the necessary expenses and charges of conveying the person
35 removed under the same back to such parish; and if they do not pay the same within seven days after the demand, the same may be recovered as penalties and forfeitures."

9th and 10th Vict., c. 66.—"No person to be removed from any parish in England in which he or she shall have

resided for five years next before the application for warrant of removal, but the time is not to be computed during which persons are serving in the army or navy, or confined in an asylum or hospital, or receiving parish relief. No widow to be removed for twelve months after her husband's death, and no child under sixteen years of age shall be removed where its father or mother, stepfather or stepmother, with whom it resides, may not be lawfully removed.

See also 10th and 11th Vict. c. 33.

10

STATUTORY PROVISIONS AS TO LUNATICS.

55th Geo. III., c. 69.—*An act to regulate Madhouses in Scotland.*

Sect. 2.—No person to keep lunatics without an annual license from the sheriff, under a penalty of L.200.

Sect. 8.—No person to be confined as a lunatic without the sheriff's warrant, on the report of medical persons, under a penalty of L.200.

Sect. 18.—Act not to extend to any house where only one lunatic is kept, unless kept for gain or reward.

9th Geo. IV., c. 34, sect. 8.—No person shall receive into his exclusive care, except he be a relative, any one insane person, without a sheriff's order and certificate by two medical men, and without making an annual report to the sheriff.

2d and 3d Vict., c. 42, sect. 30.—The General Prison Board may send lunatic criminal prisoners to an asylum, reserving all competent right of relief for the expenses.

7th and 8th Vict., c. 34, sect. 12.—General Prison Board may remove any lunatic prisoners to the General Prison.

30

4th and 5th Vict., c. 60, sect. 1.—Any person who shall be *accessory* to the confinement of a lunatic without a license, shall be liable in a penalty of L.200.

Sect. 2.—Sheriff, on application of the procurator-fiscal, may commit dangerous lunatics.

Sect. 5.—The expenses to be paid out of the rogue-money ;
 “ as also such expense as may be incurred in keeping and
 5 maintaining any such furious or fatuous person or lunatic
 committed upon such application : Provided always, that
 such expense of keeping and maintenance, together with
 the license duty, shall be defrayed by such furious or fatu-
 ous person or lunatic, if he or she has the means of defray-
 10 ing the same ; or if such expense cannot, in the opinion of
 the sheriff, be immediately recovered from such furious or
 fatuous person or lunatic, or out of his or her estate, then
 the same shall be defrayed by the parish which would be
 liable for the maintenance of such furious or fatuous per-
 15 son or lunatic if he or she were a pauper ; and it shall be
 competent to the sheriff, at the time of granting warrant of
 commitment to such licensed madhouse or public hospital
 or public asylum, if such furious or fatuous person or luna-
 tic shall not be known to be in the possession of any ade-
 20 quate means or estate, also to pronounce judgment in favour
 of the procurator-fiscal, for such sum as may be necessary
 for the maintenance of such furious or fatuous person or
 lunatic in such licensed madhouse or public hospital or
 public asylum, against the parish which, in the opinion of
 25 the sheriff, would be liable, either *ad interim*, or perma-
 nently, or ultimately, or with relief, for the maintenance
 of such person ; which judgment shall be final and conclu-
 sive, and not subject to review, by suspension, advocacy,
 or reduction, or otherwise ; but reserving always to the
 30 parish paying such sum and expenses, its recourse against
 all others liable therefor as accords of law.”

Sect. 7.—“ All parish paupers, furious or fatuous persons, or lunatics, to be confined under the power of the said recited acts, and this act, shall be sent to a public hospital or public asylum,” unless the sheriff, on cause shewn, shall, in special circumstances, authorise detention in a licensed madhouse.

See also the New Poor-Law Act, sect. 59, p. 132, line 26.

ARMY AND NAVY PENSIONERS.

By the act 2d and 3d Vict., c. 31, it is enacted, That when any pensioner shall apply for relief to the heritors and kirk-session in Scotland, it shall be lawful, but not compulsory upon them, to grant relief, and to require him to assign his next quarterly payment of pension, or allowance, which assignment shall be free of stamp-duty, and shall be in the following forms :—

Pensions payable at Chelsea Hospital.

SCHEDULE (D.)

I [naming the pensioner, and the regiment from which he was discharged] do hereby assign to the parochial board of the parish of _____, in which parish I am now residing, the next payment of my pension, at the rate of per diem, granted to me as _____ and payable from _____ in order to secure to said parish of _____ the repayment of the sum of _____ advanced to me by such parochial board, out of the funds of the said parish. 15

(Signed) _____, *Pensioner.*

Signed by the above named _____ before me, one of Her Majesty's Justices of the Peace for _____ this day of _____ (Signed) _____, *Justice.*

We do hereby certify the above assignation to be made pursuant to act 2d and 3d Victoria, cap. 51, intituled "An Act to regulate the payment and assignment in certain cases of Pensions granted for service in Her Majesty's Army, Navy, Royal Marines, and Ordnance," and to be for relief given out of the funds of the said parish on the day of _____ at a meeting of the said parochial board. 25

A. A., *Chairman.*

A. B., *Inspector and Clerk.*

or E. F., *one of the Heritors, and*

F. G., *an Elder of*

30

Greenwich Out-Pensions.

SCHEDULE (E.)

I [naming the pensioner] do hereby assign to the parochial board of the parish of _____ in which parish I am now residing, the next payment of my Greenwich out-pension, at the rate of _____ per annum, granted to me as and payable from _____ in order to secure to
 5 the said parish of _____ the repayment of the sum of _____ advanced to me by such board out of the funds of the said parish.

(Signed) _____ Pensioner.

Signed by the above named _____ before me, one of
 10 Her Majesty's Justices of the Peace for _____ this
 day of _____ (Signed) _____ Justice.

We do hereby certify the above assignment to be made pursuant to act 2d and 3d Victoria, cap. 51, intituled
 15 "An Act to regulate the payment and assignment in certain cases of pensions granted for service in Her Majesty's Army, Navy, Royal Marines, and Ordnance," and to be for relief given out of the funds of the said parish on the
 _____ day of _____ at a meeting of the said parochial
 20 board.

A. A., *Chairman.*

A. B., *Inspector and Clerk.*

or E. F., *one of the Heritors, and*

F. G., *an Elder of*

All other Pensions and Allowances.

SCHEDULE (E. E.)

I [naming the person] do hereby assign to the parochial
 25 board of the parish of _____ in which parish I am now
 residing, the next payment of my _____ [here state
 whether for pensions or allowances in civil or military ser-

vices, not as Chelsea or Greenwich out-pensioner] at
 per annum, and payable from _____ in order to secure
 to the said parish of _____ the repayment of the sum
 of _____ advanced to me by such parochial board out
 the funds of the said parish. 5

(Signed) _____ Pensioner.

Signed by the above named _____ before me, one of
 Her Majesty's Justices of the Peace for _____ this
 day of _____

(Signed) _____ Justice.

We do hereby certify the above assignment to be made 10
 pursuant to act 2d and 3d Victoria, cap. 51, intituled
 "An Act to regulate the payment and assignment in cer-
 tain cases of pensions granted for service in Her Majesty's
 Army, Navy, Royal Marines, and Ordnance," and to be for
 relief given out of the funds of the said parish, on the 15
 day of _____ at a meeting of the said parochial
 board.

A. A., *Chairman.*

A. B., *Inspector and Clerk.*

or E. F., *one of the Heritors,* and 20

F. G., *an Elder of*

RULES FOR TRANSMISSION OF ASSIGNMENTS, &c.

The assignment must be transmitted within seven days
 after its execution, and at least one month before the pay-
 ment thereon shall become due, under cover, addressed—

1st, As to pensions payable at Chelsea Hospital, or by 25
 the commissioners of said hospital, "To the Secretary of
 Chelsea Hospital," with the words "Chelsea Pensioner"
 written thereon.

2d, With respect to naval pensions, "To the Paymas-
 ter-General, Out-Pension Office, Tower Hill," with the 30
 words "Greenwich Out-Pension" written thereon.

3d, As to all other pensions, "To the Paymaster-General, Whitehall, London."

Questions with the pensioners as to the amount which the parish is entitled to receive, shall be finally determined
5 in a summary manner by one justice.

Any two or more justices may grant ORDERS, in the annexed form, for payment to the parish, from the pensions of persons suffering their wives or families to become chargeable to the parish, of one half of the pension, where the
10 wife or one child only has become chargeable, or two thirds thereof, in case a wife and child, whether his own or a step-child, or two or more children, shall have been suffered to become chargeable; and such order must be transmitted in the same manner as an assignment: Provided that, in
15 all cases where it shall be made to appear to the said justices, that the woman relieved or to be relieved as the wife of the pensioner, is notoriously profligate, or cohabiting with any other person than her said husband, it shall be lawful for the said justices, and they are required, to re-
20 fuse making any order with respect to the payment of the said pension.

FORM OF ORDER AS TO ARMY PENSIONS PAYABLE AT
CHELSEA HOSPITAL, OR BY THE COMMISSIONERS
THEREOF.

SCHEDULE (F.)

25 *Form of Order to be made in pursuance of 2d & 3d Vict.,
cap. 51.*

County of

To the Right Honourable the Lords and Others,
Commissioners of the Royal Hospital, Chelsea.

Whereas complaint upon oath hath been made unto us,
30 two of Her Majesty's Justices of the Peace, acting in and
for said county, by the inspector of the parochial board of

the parish of in the county aforesaid, that
 late a soldier in the regiment of but
 now a pensioner of the Royal Hospital at Chelsea, from
 the said regiment, at the rate of per diem, hath suf-
 fered his to become chargeable thereto, and that 5
 now maintained by the said parish at the expense
 of per week ; and due proof having been given to
 us of the said being the lawful wife [or lawful
 children] of the said [or, that the said
 is liable to maintain the said as the case 10
may be].

Now we do hereby, in pursuance of the statute in that
 case made and provided, order and direct that
 [one moiety, or two-thirds, *as the case may be*] of the
 next payment which may become due of such pension, 15
 shall be paid by the said Commissioners to the said board
 of the said parish of in order that they may re-
 tain and apply the same, or so much thereof as shall have
 been actually expended as aforesaid, for the use and in-
 demnity of the said parish, paying the overplus [if any] 20
 to the pensioner or person entitled thereto.

Given under our hands and seals this day
 of in the year of our Lord one thousand
 eight hundred and at in the
 county aforesaid. 25

ORDER AS TO GREENWICH OUT-PENSIONS.

SCHEDULE (G.)

*Form of Order to be made in pursuance of 2d & 3d Vict.
 cap. 51.*

County of

To Her Majesty's Paymaster-General.

Whereas complaint upon oath hath been made unto us, 30
 two of Her Majesty's Justices of the Peace, acting in and

for the said county, by the _____ of the parish of _____
 _____ in the county aforesaid, that _____ a
 Greenwich out-pensioner, No. _____ at the rate of _____
 per annum, hath suffered his _____ to become charge-
 5 able thereto, and that _____ now maintained by the
 said parish at the expense of _____ per week, and due
 proof having been given to us of the said _____ being
 the lawful wife [or, lawful children] of the said _____
 [or, that the said _____ is liable to maintain the said
 10 _____ as the case may be].

Now we do hereby, in pursuance of the statute in that
 case made and provided, order and direct that
 [one moiety, or two-thirds, as the case may be] of the next
 payment which shall become due of such pension shall be
 15 paid by Her Majesty's Paymaster-General to the parochial
 board of the said parish of _____ in order that they
 may retain and apply the same, or so much thereof as
 shall have been actually expended as aforesaid, for the
 use and indemnity of the said parish, paying the overplus
 20 [if any] to the pensioner or person entitled thereto.

Given under our hands and seals this _____ day of _____
 _____ in the year of our Lord one thousand eight
 hundred and _____ at _____ in the said
 county of _____

ORDER AS TO OTHER PENSIONS OR ALLOWANCES.

SCHEDULE (H.)

25 *Form of Order to be made in pursuance of 2d & 3d Vict.,
 cap. 51.*

County of _____

To Her Majesty's Paymaster-General.

30 Whereas complaint upon oath hath been made unto us,
 two of Her Majesty's Justices of the Peace, acting in and

for the said county, by of the parish of
in the county aforesaid, that a person
entitled to [*here state whether for pension or allowances*
in civil or military service, not as Chelsea or Greenwich
out-pensioner] at the rate of per annum, hath suf-
fered his to become chargeable thereto, and that
the said is [*or, are*] now maintained by the said
parish at the expense of per week, and due proof hav-
ing been given to us of the said being the law-
ful wife [*or, lawful children*] of the said [*or, 10*
that the said is liable to maintain the said
as the case may be.

Now we do hereby, in pursuance of the statute in that case made and provided, order and direct that [one moiety, or two-thirds, as the case may be] of the next 15 payment which shall become due of such pension, shall be paid by Her Majesty's Paymaster-General to the parochial board of the said parish of in order that they may retain and apply the same, or so much thereof as shall have been actually expended as aforesaid, for the use 20 and indemnity of the said parish, paying the overplus [if any] to the pensioner or person entitled thereto.

Given under our hands and seals this day of
 in the year of our Lord one thousand eight
hundred and at in the said 25
county of



SUMMARY OF THE LEADING DECISIONS

IN THE COURT OF SESSION.

1. Parties Entitled to Relief,	51
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3. Settlement, and Liability of Parish,	60
4. Assessments,	68
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I—PARTIES ENTITLED TO RELIEF.

1. Held that persons are entitled to relief who, though in ordinary seasons able to gain their livelihood, are reduced during a dearth of provisions to have recourse to a charitable supply, and an extraordinary assessment sustained for that purpose.—*Pollock v. Darling*, 17th January 1804; Mor. 10591. [This decision was pronounced by a majority of only one. “Its soundness has been much questioned.”—*Dunlop*, 366. “Great doubts may reasonably be entertained whether this judgment would now be repeated.”—*Monypenny*, p. 32.] See No. 7; also New Act, section 68, p. 138, line 4, and foot-note.

2. No action for aliment lies at the instance of a widow who has been accustomed to work, and is not disabled, against her husband’s heirs.—*M’Cowan*, 20th May 1809; F. C., *Dunlop*, 358. See Nos. 3, 4, 6, 9, 10.

3. The widow of a private soldier, a shoemaker by trade, refused aliment out of heritable property, it being worth only L.12 a-year, and she before marriage having

I. Parties Entitled to Relief.

been a servant, and not being alleged to be unfit to work.—*M'Cowan*, 20th May 1809; F. C. See Nos. 2, 4, 6, 9, 10.

4. A blacksmith having died, leaving heritable property alleged to be worth L.50 a-year, and admitted to be worth L.30, his widow found entitled to an aliment of L.15 per annum from the heirs.—*Smith*, 11th March 1812; F. C. See Nos. 2, 3, 6, 9, 10.

5. An individual having a vested reversionary interest which could be disposed of for his support, found to have no claim to relief, even from his mother, though she was in wealthy circumstances.—*Maidment*, 25th May 1815; F. C.; as reversed in House of Lords, 27th May 1818; 6 Dow, 257. See No. 11.

6. A father held not bound to aliment his son's widow, who had been a servant, and he a common sailor.—*Yuill v. Marshall*, 21st December 1815; 19 F. C.—Mr More observes that "the principle of decision here was unsatisfactory, namely, that the parties were in the lower ranks of life."—More, 34. But it rather seems that the true principle is, that the party was *able to support herself*—her health, and her habits, and situation, both before and after marriage, enabling her to work for her livelihood. See Nos. 3, 4, 9, 10. See also *Brown*, 10th July 1824; S. 3, 247.

7. A petition to the heritors and session, by 825 "able-bodied men," claiming relief as poor, "in respect of the urgency of their situation, arising from the stagnation of manufacturing employment," having been refused, on the ground that such persons did not fall within the class of poor for whom the law provided; and the sheriff having ordained the heritors and session to assess themselves for relief of these persons,—Found that this was beyond the sheriff's jurisdiction, "it being reserved to the petitioners, if dissatisfied, to apply by a competent action to the Supreme Civil Court."—*Abbey Parish of Paisley*, 29th November 1821; 1 S., 177 (N.E., 189); *Dunlop*, 457.—See

I. *Parties Entitled to Relief.*

No. 1, also New Act, section 68, p. 138, line 4, and footnote, also p. 144, line 19.

8. A woman having two infant children to support, and admitted to have been deserted by her husband, and assisted both by private charity and for a short time by parish relief, found not to be *prima facie* in such a situation as to entitle her to be at once placed on the permanent roll of paupers, the heritors and kirk-session averring that she was a stout healthy woman, able to support herself and her two children, and, moreover, that her husband's father (who had been compelled by the sheriff to take two others of her children into his family) was able also to provide for her and the rest of the children; but a remit made to the Lord Ordinary to allow an investigation of the facts of the case, with power to grant an interim allowance, pending the investigation, if he should see fit. The Court subsequently found that the pauper was bound to follow forth an action against her father-in-law, to compel him to support the children, and found her entitled to a continuance of temporary support, during the dependence of that action.—*Watson v. Kirk-Session of Ancrum*, 7th March 1828; 6 S. 736; 3 F. 792; 28th February 1829; 7 S. 495; 4 F. 647; *Dunlop*, 370; *Monypenny*, 95.

9. An aliment of L.25 per annum awarded to a widow during viduity, out of heritable burgage subjects, which had belonged to her husband, and yielded a free rental of L.54 : 10 : 2.—*Bowie v. Harvie*, 23d January 1829; 7 S. 305. See Nos. 2, 3, 4, 6, 10.

10. The widow of a party dying uninfest in heritage, yielding a free rental of about L.65, allowed an aliment of L.20, and L.10 for an infant child.—*M'Conochy v. M'Conochy*, 26th February 1830; 8 S. 604. See Nos. 2, 3, 4, 6, 9.

11. Children who had a reversionary interest in an estate, held, in peculiar circumstances, to have no claim of aliment against their mother.—*Drysdale v. Drysdale*, 3d December 1831; 10 S. 98. See No. 5.

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12. Held that no claim for aliment lay against a father, or his estate, by a son or parties in his right, where he was in possession of his mental and bodily powers, had been educated and set up in business by his father, and received about L.10,000 from him.—*Hunter's Trustees v. Macan*, 25th May 1839; 1 D. 817, 823. See No. 35.

13. A poor woman, far advanced in life, lived with her two daughters, one of whom gave birth to an illegitimate child. A decree was obtained against the father of the child, but a few shillings only were recovered. The child's mother continued for about six months after her confinement in such a state of health as to be disabled for work, and she and her child were at that time supported by the sale of the old woman's furniture. After that time the child's mother had occasional employment in a mill, where she earned 5s. to 5s. 6d. a-week, when the mill was going, less during short time, and nothing when the mill was not going. The old woman took charge of the child, and supported it partly by begging, and partly by contributions from the wages of her daughters. After ineffectual applications to the kirk-session, the grandmother raised an action against the heritors and kirk-session, concluding for inlying charges, and aliment for the child from the date of the child's birth.—Held,

1st, That she had a sufficient right to insist in the action.

2d, That in modifying the aliment, "there must be taken into view the fair proportion of what ought to have been contributed by the mother of the illegitimate child in question, during the time she was drawing the rates of wages specified in the proof: And also that the same proportion must continue to be paid by the mother when so drawing wages in time coming: But that all rights competent to any of the parties under the New Poor-Law must be reserved entire.

3d, Observed by the Lord Justice-General—"It would be hazardous to say that a woman earning 5s. a-week, and

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having one child only, is entitled to throw it on the parish, and say that the parish must aliment it. I should think that a very strong proposition." By Lord Mackenzie—"I should scruple much to lay it down that a labouring woman earning 5s. a-week, and who has a bastard child, can throw that child on the kirk-session. It may abridge her comforts to maintain it herself, but she must submit to the consequences of her delinquency." By Lord Jeffrey—"Had a claim been made against the kirk-session at the birth of the child, could that claim have been resisted? Surely not. Then the mother continues for six months after her confinement in such a state of health as to be disabled for work, and she and her child are supported on the proceeds of the sale of her mother's scanty furniture. I should think, therefore, that during that period relief must be granted to the grandmother. Had this been the case of a woman who had a bastard child, but was under no obligation to support her mother, and who was earning 5s. per week, I should have been of opinion that the mother had no claim against the parish for the aliment of her child, but that she would have been bound to bear the whole burden of supporting it. Here, however, we have the case of a woman earning 5s. a week (which, no doubt, might have been sufficient for the maintenance of herself and her child), but who is bound *jure naturæ* to contribute to the support of her old mother, with whom she resides, and who is the head of that household of which she is one of the members."—Janet Lyall or Lumsden *v.* Parish of Leslie, 18th July 1846; Jurist, 18, 588.

See also Summary of Sheriff Court Decisions, p. 87.

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14. The heir of a bastard's father not bound to aliment the bastard.—*Ker v. Moriston*, 7th Dec. 1692; M. 1363. (This may be doubted.)

15. A stepmother who was liferented in her deceased

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husband's estate, found liable to support his son and heir.—Ayton, 25th July 1705 ; M. 451.

16. Children bound to aliment their parents.—Brown, 20th July 1710 ; Mor. 448.

17. Children are bound to maintain their paternal and maternal ascendants.—Seton, M. 429 ; Anderson, M. 427 ; Campbell, 25th February 1829, F. C. ; Ettrick, 14th February 1824, 2 S., 715.

18. A father is bound to support his son's wife during the son's life, but not after his death.—Adam, 11th July 1764 ; M. 400. See Nos. 25, 27, 28, 40.

19. A kirk-session being in advance for the aliment of an illegitimate child, held entitled to insist in a process of filiation against the alleged father, for relief of their advance, and for payment of a quarterly sum of aliment, so long as the child should remain at their charge.—Kirk-Session of Wigtown v. Dalzell, 6th February 1795 ; Hume, 453.

20. Aliment held to be due by a grandfather to his grandchildren, but not to his son's wife, though the son had deserted her and gone abroad.—Belch v. Belch, 1st December 1798 ; 1 Hume, 1.

21. A brother held not bound in law to maintain his sister, though he had succeeded to an estate from their grandfather. [Having succeeded as an *heir of entail*, he was not liable for his grandfather's debts.]—Clerk, 19th February 1799 ; Mor., Aliment, Apx. No. 2 ; also Herries, 16th January 1756 ; M. 439.

22. The Court held that every man, whether in the lower or upper ranks, is bound to support his children and their descendants, according to his means, whenever necessary.—Tait, 28th February 1802 ; Mor., Aliment, Apx., No. 3. See Nos. 23, 35, 39, 41.

23. A grandfather found liable for the aliment and funeral charges of a lawful grandchild, though its father was alive and in good circumstances, but settled abroad.—Chrystie, 6th July 1802 ; Mor., Aliment, Apx. 5. See No. 22.

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24. Aliment furnished to a pupil grandchild by his grandfather, and by his grandmother, liferentrix of his property, held to have been given *ex pietate*, and not to found a claim for repayment.—Hamilton, 27th June 1807; Hume, No. 4, p. 3.

25. A son having married, died before his father, and left a widow; the grandson of that father by another son (though he was also heir and representative of his grandfather), found not liable to aliment the widow after her husband's death.—Duncan v. Hill, 28th February 1809; F. C.

26. The mother of a bastard child, having made no claim on the father for fifteen years, found entitled to demand from him, at the end of that period, her inlying expenses, and an aliment for the child for each of these past years.—Finlayson, 7th July 1809; F. C.; Dunlop, 370.

27. A father-in-law, who is able to do so, is liable to aliment his daughter-in-law while his son is alive, but unable to maintain her; and this liability enforced by decerning for payment after the son's death.—Duncan v. Hill, 17th February 1810; 15 F. C. 591. See Nos. 18, 28, 40.

28. A father held not bound to aliment his son's widow, who had been a servant, and he a common sailor.—Yuill v. Marshall, 21st December 1815; 19 F. C. 62. See Nos. 2, 3, 4, 6, 9, 10, 18, 27, 40.

29. A kirk-session has no title, without the concurrence of the mother, to pursue an action for aliment against the father of a bastard child, unless an actual claim for its support has been made against the parish.—Kirk-Session of Garvald v. Forrest, 14th February 1817; 19 F. C. 293; Dunlop, 397.

30. A grandfather with a large family, and in moderate circumstances, is only liable to maintain his indigent grandchild under his own roof, and in family with himself.—M'Kissock v. M'Kissock, 14th February 1817; Hume, 6. See Nos. 31, 37, 38, 41.

31. If a son, who is liable to aliment his father, be un-

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able to afford a separate maintenance, it will be sufficient for him to receive the father into his house, and there maintain him.—*Greig v. Crawford*, 1817; *Dunlop*, 372, No. 5. See Nos. 30, 37, 38, 41.

32. The heir of a tenant having an income of L.70, found liable to each of two sisters in L.9 yearly till eighteen years of age (without prejudice to a future application), and L.12 to his mother. *M'Rostie v. M'Rostie*, 21st February 1818; *Hume*, 9.

33. Held (reversing a judgment of the Court of Session), that a mother and stepfather were not bound to aliment a son, though he was heir of a property in which the mother was liferented, he being of age, and his reversionary interest marketable.—*Maidment*, 25th May 1815; *F. C. Reversal* 27th May 1818; 6 *Dow*, 257. See No. 42.

34. A claim of aliment before the Sheriff-Court sustained on *prima facie* evidence of marriage, though the husband denied the marriage, and the case was pending before the Commissary Court.—*M'Leod*, 9th June 1820; *Hume*, No. 12, p. 10.

35. The obligation to aliment, as between parent and child, during their lives, is perpetual; but if the father has at his death made an adequate provision for his child, no claim can be made against his representative on the subsequent poverty of the child.—*Earl of Strathmore v. Earl of Strathmore's Trustees*, 13th December 1822; 2 *S.* 84 (*N. E.* 77). *Aff.* 17th June 1825; 1 *W. S.* 402. See Nos. 11, 12, 16, 22, 43.

36. A son found liable to contribute to the support of his father, who, though not entirely destitute, was imbecile and paralytic.—*Pringle*, 10th July 1824; 3 *S.* 248.

37. A grandfather, 67 years of age, who had lost the use of one hand, and whose clear gains as a carter, after deducting house-rent and keep of horse, did not exceed L.5 per annum, found not liable to relieve the parish of the support of his grandchildren, nor, in consequence of the state of his wife's health, to receive them into his own

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house.—*Wilson v. Cockpen*, 18th February 1825; 3 S. 546 (N. E. 378). See Nos. 30, 31, 38, 41.

38. The obligation on the part of a son to aliment his mother, is not implemented by an offer to receive her into his house, unless he be unable to afford a separate maintenance.—*Jackson v. Jackson*, 3d March 1825; 3 S. 610 (N. E. 429); and 17th November 1825; 4 S. 186 (N. E. 188). See Nos. 30, 31, 37, 41.

39. The maternal grandfather of a bastard pauper not liable to aliment him.—*Nicol*, 19th June 1832; 10 S. 670; 7 F. 514. The principle on which the case was argued applies equally to the *paternal* ascendants of a bastard.—*Dunlop*, 370. See *Sheriff Court Decisions*, No. 30.

40. A father-in-law held not liable to aliment his son's widow after the son's death.—*Pagan*, 27th January 1837; 16 S. 399. See Nos. 18, 27, 28.

41. A paternal grandfather renting a farm of L.70 a year, but reported by the elders of the parish to be poor, burdened with a numerous family, and under sequestration for rent, having offered to take one of his orphan grandchildren into his family, assoilzied from an action for money aliment, at the instance of his two grandchildren.—*Jamesons*, 22d November 1845; 8 B. M. Y. 86. See Nos. 30, 31, 37, 38.

42. Held that a stepmother is not liable, *jure naturæ*, to aliment a stepson.—*Macdonald*, 20th June 1846; B. M. 8, 830. See Nos. 15, 33.

43. In the case of a mother domiciled in England, against whom jurisdiction is founded by arrestment, her liability to aliment her child is to be determined, not according to the law of Scotland, but according to the law of England, though she was domiciled in Scotland at the date of her marriage, and of the child's birth. And opinion—
1. That a mother is liable to aliment her indigent child, though he have squandered away his fortune, and be past majority. 2. That children entitled to a contingent or reversionary interest in property, but deriving no immediate

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profits from it, are not bound to sell it, or contract debt on it, in order to afford aliment to an indigent parent.—Macdonald, 20th June 1846; Bell and Murray's Reports, vol. viii., p. 830. See Nos. 11, 12, 35.

44. Is the husband of a daughter bound to aliment her father, she having no separate property?—Macdonald, 20th June 1846; Jurist, 18, 452.

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45. The burden of maintaining a pauper cannot be thrown on the parish of his birth, if he has acquired a settlement otherwise. But if he has no other settlement, he is entitled to be supported by that parish.—Dunse, 5th June 1745; M. 10553.

46. Three years' industrial residence, found to establish a settlement, and the parish of birth, being different from that of residence, found to be released by such residence elsewhere.—Crailing, 7th March 1767; Mor. 10573; Hutton, 6th December 1770; Mor. 10574; Waddell, 14th June 1781; Mor. 10583; but see the New Act, section 76, p. 148, line 2. See Nos. 52, 55, 70.

47. In the case of a lawful child, the parish of the father's settlement, and not that of the child's birth, is liable to maintain the child.—Coldinghame, 28th July 1779; Mor. 10582. See Nos. 50, 69, 73.

48. Persons who, from disability or otherwise, are proper objects of parochial relief, cannot acquire a settlement by residence for any length of time, even though they may never have received aid from the parish.—Runciman, 24th January 1784; M. 10583. See New Act, sec. 76, p. 148, line 3.

49. A day labourer who lived, and supported himself, for more than three years in a parish, and was reduced to poverty by sudden blindness in a year after he left it, found to have acquired, and to retain, a settlement in that

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parish, though he did not apply to the parish till seven years afterwards.—*Runciman v. Parish of Mordington*, 24th January 1784; Mor. 10583. See New Act, sec. 76, p. 149, line 2.

50. A child under 14 years of age cannot obtain a settlement by residence, even when living out of family, and in a different parish from its parents, or deserted by them, or although they be dead—and the parish bound to maintain a legitimate child under that age, is determined by the birth or residence of its father.—*Howie v. Kirk*—Session of Arbroath, &c., 25th January 1800; 12 F. C. 357; Mor. No. 1, Apx. Poor; Dunlop, 376, 83, 5, 7, 96, 459. See Nos. 47, 59, 69, 73.

51. The mother's brother who had voluntarily supported a child, found entitled to relief from the date of his application to the parish; but his prior advances held to have been made *expietate*, and reimbursement refused.—*Howie v. Kirk*—Session of Arbroath, &c., 25th January 1800; 12 F. C. 357; Mor., No. 1, Apx. Poor; Dunlop, 376, 83, 5, 7, 96, 459. [This was altered in a later case, and aliment given from the birth of the child, although no application for relief was made to the parish for two years thereafter.—*Robert*, 5th February 1825; 3 S. and D. 500; but the soundness of the later decision on this point is questioned by Mr Dunlop, p. 396, note. 5.]

52. Held that a parish in which an itinerant dancing-master had "his most common resort," by teaching dancing and living therein, in lodgings, for four months yearly, during 14 successive years, though he never had a house in it, was liable in the maintenance of the pauper, notwithstanding his having carried on his profession in other places during the rest of each year.—*Dalmellington v. Irving*, 3d December 1800; 12 F. C. 471; Mor. No. 2, Apx. Poor; Dunlop, 378, 9. See 46, 55, 70.

53. An illegitimate child follows the settlement of its mother.—*Rescobie v. Aberlemno*, 28th November 1801;

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13 F. C. 14; Mor. 10589; Dunlop, 378, 83, 7, 8, 96, 495. See 57, 72, 74.

54. The exposure of a child does not affect its settlement, if the previous settlement can be discovered.—*Rescobie v. Aberlemno*, 28th November 1801; 13 F. C. 14; Mor. 10589; Dunlop, 378, 83, 7, 8, 96, 459. See 58.

55. Observed that a legal settlement may be obtained by residence alone, without any industrious occupation. The pauper in this case is described as a common vagrant, and was settled on the parish where she had most haunted.—*Rescobie v. Aberlemno*, 28th November 1801; 13 F. C. 14; Mor. 10589; Dunlop, 378, 83, 7, 8, 96, 459. See Nas. 46, 52, 70, 59, 67.

56. The industrial residence of a pauper for three years in a parish in England, which does not by the English law entitle to a permanent settlement, though it does entitle to interim relief, held (after great difference of opinion) not to liberate a parish in Scotland where a settlement had been previously acquired.—*Brown v. Kirk-Session of Mordington*, 4th March 1806; 13 F. C. 541; Mor. Apx. Poor, No. 4; Dunlop, 380; Monypenny, 109.

57. The settlement of a bastard's mother is also the child's settlement, though it may have been born and resided elsewhere.—*Gladsmuir v. Preston and Salton*, 11th June 1806; 13 F. C. 563; Mor. No. 6, Apx. Poor; Dunlop, 376, 83, 4, 5, 7. The same judgment repeated, and the parish of the father's settlement found not liable, although a decree for aliment had been obtained against the father himself, by the parish of the child's birth, which had given interim relief.—*Edinburgh v. Brown*, 11th June 1806; 13 F. C. 566; Mor. No. 5, Apx. Poor; Dunlop, 383. See 53, 72, 74, 63.

58. A child being exposed, and its parents and birth-place unknown, the burden of its support laid on the parish of exposure.—*Thomson v. Pollock*, 17th November 1808; 15 F. C. 7; Dunlop, 410. See 54.

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59. Three years residence as an apprentice fixes a settlement, although the apprenticeship began when the boy was only fourteen years of age, and during all the period of his residence, his labour was inadequate to his support. He resided with his master, and was supplied with necessities by his father.—*Cockburnspath*, 9th June 1809; 15 F. C. 300; *Dunlop*, 376, 8, 87. See 46, 50, 55, 67, 73.

60. A Scotch woman, who had married an Englishman, was found not entitled, during the subsistence of the marriage, although he had deserted her, to permanent alimant for herself or her children, from a Scottish parish, in which she had resided for six years with her father prior to her marriage, and to which she had returned, after being deserted by her husband. The Court was clear that the children would have been entitled to interim relief, but it became unnecessary to determine whether that burden fell on the parish in which the mother, or that in which the children, resided.—*Pennycuik v. Heritors of Duddingston*, 3d March 1813; 17 F. C. 249; *Dunlop*, 375, 6, 82, 5, 7, 8.

61. The First Division of the Court sustained a claim against a parish for inlying expenses.—*Murray v. Craick*, 1817; *Dunlop*, 359.

62. The parish in which a lunatic had been apprehended, found liable, in the first instance, in his maintenance in the bedlam of Edinburgh, where he had been sent by the Sheriff, on an application from the Procurator-Fiscal, although the pauper had not chiefly haunted that parish, power being reserved to the parish to maintain the lunatic at a cheaper rate, if kept in safe custody to the satisfaction of the Sheriff.—*Scott v. Thomson*, 13th November 1818; 19 F. C. 558; *Dunlop*, 360, 81, 98. See Statutory Provisions as to Lunatics, *ante* p. 41. See also Nos. 64, 68.

63. A woman having come to a parish to be there secretly delivered of an illegitimate child, and having left the parish with the child, immediately after its birth; and the

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bastard having grown up, married, and deserted his family, held that the parish of his birth was not liable to maintain his family, his father and mother having been born and resided in an adjoining parish, and he himself being alleged to have acquired a different settlement, by residence elsewhere.—*Kirk-Session of Dalmellington v. Kirk-Session of Troqueer*, Jan. 22, 1822; 1 S. 259; N. E. 244; *Dunlop*, 381, 7, 9. See 53, 57, 72, 74.

64. A pauper was tried for theft before the Court of Justiciary, and a verdict returned, finding that he was insane at the time of committing the theft, and the Court ordained him to be confined in the jail of the head burgh of the county where the crime was committed; held (but reversed), that the burden of maintaining him in jail, and afterwards in a lunatic asylum till liberated on a remission, falls on the crown, and not on the county where the acts were perpetrated, nor the burgh of imprisonment, nor the parish of his settlement.—*Commissioners of Supply of Wigtonshire v. Parishes of St Quivox, &c.*, 21st February 1823; 2 S. 236 (N. E. 208); 21 F. C. 174; 5th June 1827; 5 S. 767 (N. E. 716); 2 F. 531; 10th March 1830; 4 W. S. 43; *Dunlop*, 369; *Monypenny*, 117. See p. 41, lines 25, 28. See also Nos. 62, 68.

65. A foreigner (in this case an Irishman) may acquire a settlement by residence, so as to entitle him to parochial relief.—*Higgins v. Kirk-Session of the Barony Parish, Glasgow*, 9th July 1824; 3 S. 239 (N. E. 168); 21 F. C. 588; *Dunlop*, 360, 375.

66. The kirk-session is not bound to award an aliment for any definite period; as till a child attains a certain age.—*Robert*, Feb. 5, 1825; 3 S. & D. 50; *Dunlop*, 359.

67. A party subject to occasional attacks of mental derangement, but not such as to prevent her from earning ordinary wages, so as in a great measure to support herself, held to have acquired a settlement by residence in a parish for nine years, without having received parochial relief.—*Heritors and Kirk-Session of Haddington v. Dun-*

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bar, 19th December 1837; 16 S. 268; Dunlop, 377. See 55, 59.

68. A lunatic pauper, brought for trial before the Court of Justiciary, having been found not to be fit for trial, and ordained to be kept in custody till further orders,—held, in a question between the collector of rogue-money for the county and the parish where he was apprehended, in conformity with *Scott v. Thomson*, 13th November 1818, that the parish was primarily liable for the aliment, subsequent to the sentence, until the parish of settlement should be discovered.—*Kirk-Session of Kilmorich v. Beith*, July 10, 1839; 1 D. 1231; 14 F. 1222; Dunlop, 360, 81. See 62, 64.

69. A widow, the mother of a lawful posthumous child, having acquired a settlement for herself by residence after her husband's death, the infant child held to have thereby acquired the same settlement.—*Orieff v. Foulis, &c.*, 19th July 1842; Dunlop's Reports, 4, 1538. See p. 17, note 1, also Nos. 47, 50, 73.

70. Residence, in order to acquire a settlement, though it need not be constant, must be continuous, and for the complete period. Therefore, a deficiency of a fortnight, at the beginning or end of the term, held to prevent the settlement being acquired, though occasional absence of equal duration, *during its currency*, would not have had that effect.—*Crieff v. Foulis, &c.*, 19th July 1842; Dunlop's Reports, 4, 1538. See 46, 52, 55.

71. Held that an allowance of 3s. 6d. per week is not sufficient as needful sustentation to a widow alleged to be in good health, having seven children, though one of the children was provided for by her uncle, and the eldest, a daughter under fourteen, was able to earn from 2s. to 3s. per week, and the mother earned 2s per week:—Observed, that the earnings of the daughter were not more than sufficient for her own clothing and support, and were not to be deemed applicable to the maintenance of either her mother or her infant brothers or sisters:—6s. per week, suggested

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by the Lord President as a reasonable allowance, to be reduced, at the discretion of the kirk-session, when any of the children should be able to earn anything towards their own support: but the Court, without adopting this suggestion, remitted to the heritors and session to reconsider the case, and to award such addition to the former weekly aliment as may be reasonable under the whole circumstances of the case, and to make the same draw back to the date of the original application.—*E. Pride or Duncan v. Parish of Ceres*, 14th February 1843; *Dunlop's Reports*, 5, 552. See *New Act*, sec. 75, p. 146, l. 10. See p. 3, also Nos. 75, 76.

72. The settlement of a bastard child, determined by that of its mother.—*Lasswade*, 6th March 1844; *B. M. Y.* 6, 956. See 53, 57, 63, 74.

73. A lawful child during pupilarity (below 14 in males, 12 in females), follows the father's settlement, even though residing apart from him, and in a different parish, not being then capable of acquiring a separate settlement for itself: and it retains that settlement although the father may have lost it by his removal to a different parish after the child has reached the years of puberty, the child still residing apart from him, and being then capable, by law, of acquiring a new settlement, by its own residence.—*Lasswade*, 6th March 1844; *B. M. Y.* 6, 956. See 47, 50, 59, 69.

74. The mother of a bastard child, never having acquired a settlement by her own residence, in any parish, the bastard's settlement held to be in a parish in which its maternal grandfather had acquired a settlement by residence, while the mother was in pupilarity, although she did not then reside with him.—*Lasswade*, 6th March 1844; *B. M. Y.* 6, 956. See 53, 57, 63, 72.

75. An allowance of L.6 a-year, with ten carts of peats, and a house to live in, found insufficient sustentation for two sisters, one eighty-four and infirm, and the other eighty-six years of age and bedrid, who could do nothing

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for themselves; and a remit made to the heritors and session “to award such farther allowance as may, under the whole circumstances of the case, be deemed reasonable.”—*Halliday v. Parish of Balmaclellan*, 11th June 1844; B. M. Y. 6, 1131. The heritors and session having delayed to increase the aliment, the court, on a new advocacy, ordained them to pay 3s. 6d. weekly, to each of the two paupers.—*Halliday*, 16th July 1845; B. M. Y. 7, 1057. See p. 3, also Nos. 71, 76.

76. The mother of a bastard child, having obtained a decree against the father, but having failed to recover any thing from him, and being herself unable to support the child; and her father, with whom she and the child resided, having raised an action against the heritors and kirk-session before the sheriff (which came into the Court of Session by advocacy), he was found entitled to L. 6 a-year from the birth of the child, and so long as he should continue to support it, and the parents should be unable to do so, and it should in its own right be entitled to parochial relief: and this, although the bastard’s father had offered to take the child into his own custody, the mother of an infant bastard having the absolute right of custody.—*Weepers v. Parish of Kennoway*, 20th June 1844; B. M. Y. 6, 1166. See Nos. 71, 75, 142, 143.

77. Held, that so long as the husband retains his settlement, a married woman cannot, by separate residence, acquire a different settlement during the subsistence of the marriage, even though her husband has deserted her and gone abroad,—and the parish of her husband’s settlement found liable to relieve the parish of her own residence.—*Gray v. Fowlis*, 5th March 1847; *Jurist*, 19, 363.

78. Observed, that “a child can in no case be deprived of the father’s settlement unless by acquiring a separate settlement of its own.”—*Lords Ivory, Cockburn, and Murray*, in *Gray v. Fowlis*, 5th March 1847; *Jurist*, 19, 363.

See also Summary of Sheriff Court Decisions, p. 90.

IV. *Assessments.*

IV.—ASSESSMENTS.

(See *New Act*, p. 119).

79. In apportioning the heritor's half of the poor assessment, it is competent to adopt either the real or valued rent, subject to the control of the Supreme Court.—Scott, 19th January 1773; M. 10577. See Nos. 101, 106, 107.

80. Coal-works, salt-works, and mills, are liable to be assessed for support of the poor.—*Inveresk v. Musselburgh*, 28th May 1794; Mor. 10585.

81. It is competent for the magistrates of Glasgow to levy the poor-rates upon the inhabitants according to the extent of their heritable property within the town, and of their personal property wherever situated. The court thought the mode of assessment complained of was sanctioned both by the act 1579, c. 74, and by immemorial usage. But it was at the same time observed, that although persons in the defenders' situation (resident, but not in trade) should be obliged in one shape or another to contribute to the support of the poor, as nearly as possible in proportion to their fortunes, the rule adopted in Edinburgh, of making every person pay according to the rent of the house which he inhabits, is perhaps preferable, as affording a datum sufficiently accurate, and, in no case liable to partiality.—*Collector of Glasgow v. Dreghorn*, 2d December 1797; Mor. 10587; see *Dunlop*, 425. See *New Act*, p. 119, line 18. See No. 90.

82. It has been found that the same individual may be assessed as an inhabitant both of a landward parish and of a burgh.—*Buchanan*, 22d November 1798; (not reported—noticed in *Hutchison*, 2, 47); *Dunlop*, 425. See No. 91.

83. A rate-payer found entitled to demand inspection of the assessment-books. In this case the rate-payer was also a member of town-council, which seemed to influ-

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ence several of the judges.—*Ross v. Carrick*, 16th December 1800 ; Mor., Poor, Apx. No. 3.

84. A person who has been assessed for poor's-rates on his whole means wherever situated, and not alleging wilful and corrupt partiality on the part of the assessors, ordained to pay in the meantime, reserving his right to be heard, as to any alleged overcharge, in an action of declarator for repetition.—*Ross v. Carrick*, 16th December 1800 ; 12 F. C. No. 11, Apx. ; Mor. No. 3, Apx. Poor ; Dunlop, 433, 7 ; Monypenny, 107. See Nos. 92, 100.

85. Property acquired by the crown from a subject, although used for public purposes, such as barracks, found liable to poor-rates.—*Commissioners for Barracks v. Milroy*, 21st November 1815 ; 19 F. C. 28.

86. A minister, in his clerical character, found not liable to be assessed for poor-rates. [This was a case of assessment on means and substance, and it would rather seem that the principle of decision was, that a prospective income of the nature of stipend was not to be regarded as means and substance.]—*Cargill v. Tasker*, 29th February 1816 ; F. C. 5. 103 ; but see New Act, sec. 49, p. 128, line 4, by which *stipends* are made liable.

87. The tenant's half of a poor-assessment being laid on, according to a fixed per-centage on the rent of tenants paying above L.20 of rent, but according to means and substance on tenants and cottars under that rent ; found that it ought to be laid on according to one rule for both classes, and that the lawful rule is, " according to means and substance of every description within the parish."—*Cargill v. Tasker*, 29th February 1816 ; F. C. 5, 104 ; see Dunlop, 424 ; see New Act, sec. 36, p. 122, line 5.

88. Where a part of a parish is disjoined, or annexed, *quoad sacra* merely, an assessment can be imposed only by the heritors and kirk-session of the parish to which this portion is attached *quoad civilia*, and for the support of the poor of that parish alone.—*Gammell*, 26th November 1816 ; Dunlop, 410. See 144.

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89. Found by the Lord Ordinary, that the exemption of tenants and inhabitants not having an income of above L.40 yearly, and of landlords whose rents did not exceed L.6 yearly, is not a measure which warrants the interference of this Court. The point was not decided in the Inner-House, as the case was compromised.—Gammell, 1822; Dunlop, 572; Apx., 10. See New Act, p. 127, line 23.

90. A person assessed as an heritor is also subject to assessment on his personal estate wherever situated.—Gammell, 1822; Dunlop, 572; Apx. 10; Cochran v. Manson, 11th February, 1823; 2 S. 201. [In the latter case, the Court went beyond this, and sustained an assessment on an heritor (who occupied his own lands, and had a considerable personal estate) in the three characters of heritor, tenant, and inhabitant, laying a separate rate on him for each; but it has been doubted from the Bench whether the judgment was correct to this extent.—Lord Corehouse, in Buchanan, 21st February 1827; 5 S. 390.] See 81.

91. A merchant burgess, partner of a company carrying on business in a counting-house within burgh, at which he gives his personal attendance for a few hours daily, during about seven months of the year, but having his dwelling-house with his family in a neighbouring parish, where he is assessed as a householder for the support of the poor, held, by a majority of eight against six, to be an "inhabitant" of the burgh, to the effect of being liable in his proportion of the assessment for the poor. In this case the party challenging the assessment paid stent as a trader, had been a member of the town council, and had acted as assessor for the poor-rates, in which character he concurred in imposing an assessment on himself for the poor of the burgh, and had paid it without objection for a number of years.—Buchanan v. Parker, 21st February 1827; 5 S. 390 (N.E. 362); 2 F. 228; Dunlop, 349, 352, 419, 25, 6, 8, 32. See 81, 82, 105.

92. Parties aggrieved by an assessment must seek re-

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lief by advocacy or suspension in the Court of Session; but the Court will not entertain a general declaratory action, by an inhabitant of a parish, as to the rule according to which he ought to be assessed.—Boyd, 23d February 1827; 5 S. & D. 413. See 84, 100.

93. Crown property acquired from a subject, and occupied for public purposes, is liable to assessment for poor-rate according to its value as unoccupied ground estimated at the date of the assessment, without including buildings erected by the Crown for the public service.—*Ordinance v. North Leith*, 14th February 1829; 7 S. 416.

94. Decided in the House of Lords, that in a royal burgh having a landward district, forming one parish, the administration of the poor and assessment leviable over the burgh and landward district, should not be distinct.—*Dunbar*, 4th July 1833; 11 S. D. B. 879; and 10th April 1835; 1 S. and M'L. 134. See 115.

95. Held by the Lord Ordinary, and acquiesced in, that the trustees of a public harbour are not liable in poor-rates on such part of the duties levied thereat, under statute or by custom, as may have been applied to the maintaining or improving of the harbour.—*Kirk-Session of South Leith v. Magistrates of Edinburgh*, 12th November 1833; 15 S. 204, foot-note; *Dunlop*, 411, 17.

96. Held by the Lord Ordinary, and acquiesced in, that a duty (the merk per ton) leviable by special statute on goods imported into Leith, for the support of the clergy of Edinburgh, is not subject to assessment for the poor.—*Kirk-Session of South Leith v. Magistrates of Edinburgh*, 12th November 1833; 15 S. 204, foot-note; *Dunlop*, 411, 17.

97. Held by the Lord Ordinary, and acquiesced in, that the rents of buildings erected by money borrowed by the Magistrates of Edinburgh, under statutory authority, and appropriated by the statute exclusively to the purposes of the harbour of Leith, are not liable to be rated to the poor,—but by a compromise, a rate submitted to, as on an estimated rent of the *solum*, distinct from the buildings.—

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Kirk-Session of South Leith *v.* Magistrates of Edinburgh, 12th November 1833; 15 S. 204, foot-note; Dunlop, 413.

98. Held by the Lord Ordinary, and acquiesced in, that feu-duties are not liable to be taxed for relief of the poor, in respect that the subjects themselves are liable to be and are taxed for the same fully, without deduction on account of the said feu-duties.—Kirk-Session of South Leith *v.* Magistrates of Edinburgh, 12th November 1833; 15 S. 204, foot-note.

99. A society composed of the members of a trade within burgh, established chiefly for the support of poor members, possessed certain flour mills and granaries, in which they carried on business; the profits being, by the constitution of the society, appropriated, in the first place, to the support of the poor members, and any surplus being declared applicable to the use of the society. In a question as to how far the society was assessable for the maintenance of the poor of the burgh, in respect of the trade so carried on by them, and of the rents of their mills and granaries, the Court found that they were not to be considered a “purely charitable institution, the funds of which were in no respect liable in contribution for the poor;” but that they were only assessable “in so far as there were rents or profits accruing from the mill or other property or trade belonging to the society, over and above the usual allowances granted to poor and aged members, and divisible among the members, or applicable to the purposes of the society generally.”—Baker’s Society of Paisley 6th December 1836; 15 S. D. B. 200.

100. A suspension of a charge by a collector for payment of poors-rates, on the ground that they had been imposed on an unjust principle, sustained, as a competent mode of trying the question, the suspender undertaking to pay his share in the meantime.—Crawford *v.* Harkness (Kilmarnock), 31st May 1838; 16 S. 1072; 13 F. 748; Dunlop, 417, 8. See 84, 92.

101. In a landward parish, containing a large town popu-

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lation and a small country population, found that the assessment ought to be levied according to the real, not according to the valued, rent.—*Crawford v. Harkness*, 31st May 1838; 16 S. 1072; 13 F. 748; Dunlop, 417, 8. See No. 79.

102. Lands were by statute disjoined from a landward parish, and annexed to the royalty of a royal burgh, constituting a separate parish, under the provision that they should, notwithstanding, “remain liable for ministers’ stipend, and other parochial burdens, in the same manner as if the act had never passed;” held that the proprietors and occupiers of the lands, and of dwelling-houses erected thereon, remain liable in assessment for the poor of the landward parish, according to the value of the whole property, and without any distinction between the *solum* and the houses, although they were at the same time subject to be assessed for the poor of the royal burgh.—*M’Craw v. Allan*, 16th February 1839; 1 D. 513; 14 F. 577; Aff. 6th October 1841; 2 Rob. 507.

103. Highways “have always been held to be exempted from assessment by the law of Scotland.”—Lord Ordinary, in case of *Anderson*, 7th March 1839; Dunlop, I., 648.

104. Part of a canal within a parish held to be assessable in poor rates according to the annual value of the canal, as an heritable property.—*Anderson*, 7th March 1839; Dunlop, I., 648. See New Act, sect. 45. See No. 106.

105. The sheriff-clerk of the county of Forfar, who was permanently resident in Edinburgh, rented an office for conducting the sheriff-clerk’s business in Dundee, to which an additional sheriff-substitute had been appointed, and to which his visits were only at intervals and very short, and he then lodged at a hotel; held that he was not to be considered an “inhabitant” of the burgh so as to be liable in assessment for the poor.—*Morris v. Orr*, 11th December 1840; 3 D. 232; 16 F. 170. See 91.

106. In a parish where the poor-assessment is laid one-

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half on the heritors and the other half on the occupants, held, (1.) That the proprietors of a canal, who use their own line for profit and levy its tolls, are liable in assessment, both as occupants and as heritors. (2.) That in calculating the rental on which they ought to be assessed, a deduction must be made from their annual revenue, on account of the capital embarked in their carrying trade, and also on account of tenants' profits.—Anderson, 14th January 1847; Jurist, 19, 187.

107. House property belonging to, and occupied by, a canal company, for the uses of their canal, is assessable in poor-rates exclusively in the parish where such house property is situated; and the rent of such houses is to be deducted from the general revenue or value of the canal, before apportioning that revenue or value (with a view to assessment) among the various parishes through which the canal passes, in terms of the New Poor-Law Act, sect. 45.—Anderson, 14th January 1847; Jurist, 19, 187.

108. A feuar in a *landward parish*, who held under a charter by which his superior bound himself to relieve the feuar, "of all feu, teind, and blench duties, ministers' and schoolmasters' stipends and salaries, building, repairing, and upholding of kirk and kirkyard dykes, ministers' manses, schoolhouses, future augmentations, and for all cesses, taxations, highway money, and *other public burdens* whatever, due or payable forth of, or that anywise may be imposed upon, the lands and others above mentioned, in all time coming," held entitled to relief from the superior for poor-rates *assessed on the rental of the lands*.—Reid v. Williamson, 16th February 1843; Dunlop, 5, 644; Jurist, 15, 308.—The contrary was held in a similar case *within burgh*, in respect the poor-rates leviable within burgh under the statute 1579, c. 74, p. 36, "are not an imposition upon land, but a personal tax, exigible in respect of inhabitancy."—Sprot, 29th May 1829; Shaw, 7, 682.

See also Summary of Sheriff Court Decisions, p. 93.

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V.—ADMINISTRATION.

109. Found that the heritors have a joint right with the kirk-session in the administration, management, and distribution of all and every of the funds belonging to the poor of the parish, as well collections as sums mortified for the use of the poor, and money stocked out upon interest, and have right to be present, and join with the session in their administration, distribution, and employing such sums; without prejudice to the kirk-session to proceed in their ordinary acts of administration, and application of their collections to their ordinary or incidental charities, though the heritors were not present, or did not attend. But, for the better preventing the misapplication or embezzlement of the funds belonging to the poor, found that when any acts of extraordinary administration, such as uplifting money that had been lent out, or lending, or re-employing the same, should occur, the minister ought to intimate from the pulpit a meeting for taking such matters into consideration, at least ten days before holding of the meeting, that the heritors may have opportunity to be present, and assist if they thought fit.—Humbie, 15th February 1751; Mor. 10563. See New Act, sect. 54, p. 130, line 6. See 111, 117.

110. The cost of and subsequent repairs on a tent for field-preaching, and the session-clerk's salary, found to be proper charges against the poor's-money.—Hamilton, 23d November 1752; Mor. 10570.

111. Any of the heritors of a parish is entitled to call the kirk-session to account for their management of the poor's-money.—Hamilton, 23d November 1752; Mor. 10570. See New Act, sect. 54, p. 130, line 6. See 117, 118.

112. The cost of communion forms, tables, and table-cloths, rent for a preaching field, and the expense of constables for keeping the peace at a sacrament, disallowed as a charge against the poor's money, and a salary paid to

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the presbytery clerk found to be illegal.—Hamilton, 23d November 1752; Mor. 10570. See the New Act, sect. 54, p. 130, line 6.

113. In a landward parish all proprietors of lands or houses, who are liable in payment of poor-rates are to be considered heritors, though not in the cess-rolls, nor in the books of the collector of cess.—Murdoch, 23d February 1830; 8, S. D. B. 587; Toshack, 18th July 1771; M. 13134; Strathmore, 26th February 1672; M. 13128.

114. Observed, that it is the duty of the heritors and session to give a written deliverance on all applications for relief.—Anderson, 29th November 1834; 13, S. D. B. 108.

115. Held (in conformity with the case of Dunbar, 1 S. and M'L. 134), that in a parish partly burgh and partly landward, notwithstanding the practice had been for upwards of twenty years, to have a separate management and assessment for the poor in the burgh and landward districts, one roll of poor was to be made up for the whole parish, and the administration was to be jointly in the magistrates of the burgh, and the kirk-session and heritors of the landward part of the parish, acting as one body.—Currie v. Lockhart, 5th March 1841; 3 D. 799; 16 F. 795. See 94.

116. Observed, and concurred in by three of the judges, that, "when a pauper comes for needful sustentation, he cannot be met with the answer, that he may go against relatives." Sustentation must be given in the first instance by the parish, which may seek its relief against those bound to aliment the pauper.—Ceres case, 14th February 1843; Dunlop's Reports, 5, 577.

117. William Brown bequeathed to the poor of the parish of Lochwinnoch L.4000, "which is to be placed out at interest by my executors hereinafter named, and vested by them in landed or government securities, and the interest arising therefrom to be yearly, and every year, divided amongst the poor of the said parish by the *minister and elders* of the parish church of Lochwinnoch;" held, that the investments ought to be taken in name of the

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minister and kirk-session, and their successors in office, as trustees for behoof of the poor of the parish; "but subject always to the control and superintendence of the heritors of the parish, or any committee to be appointed by them as interested in the management of the poor-funds, in terms of law, particularly subject to such control in the investment, uplifting, or reinvestment of the foresaid principal sum, three months notice being always given to the said heritors or their committee of any proposed change of investment."—*Smith v. Jaggard*, 7th July 1843; *Jurist*, 15, 579. (It was noticed by the Lord Ordinary, that in a similar case before him, it had been arranged of consent, that the security should be changed, and the money reinvested, only at the sight of the sheriff of the county.)

118. A testator having appointed his executors to pay a certain sum "to the poor in the parish of Cramond," and the executors claiming the selection of the objects of charity and the distribution of the money; held that the heritors and kirk-session, as the legal administrators for the poor, were entitled to receive payment of the fund, and to administer it.—*Hope v. Kirk-Session of Cramond*, 7th June 1844; *Jurist*, 16, 484. (The same principle would now vest the administration, in a similar case, in the parochial board. See p. 107, l. 30, and p. 111, l. 25.)

119. An inspector of the poor has a good title to pursue for arrears of assessments, which were payable before the passing of the New Poor-Law Act.—*Meek*, 14th November 1846; *Jurist*, 19, 10.

120. The managers of a mortification created for the benefit of the poor in a parish (without any regular deed of mortification, or rules for their guidance), having borrowed money for the use of the poor during a period of severe destitution; held, that the mortified property could not be evicted or adjudged for payment of the debt, but that in the special circumstances, the creditors were entitled to repayment by annual instalments out of the rents or yearly produce of the mortified property. (See Proclamation, 11th

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August 1692;) *Arbroath Banking Company v. Clugston*, 16th June 1847; *Jurist*, 19, 534.

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121. The sheriff has no power to judge of the amount of aliment to be awarded to a pauper.—*Paton*, 20th November 1772; *Mor.* 10577. See *New Act*, p. 145, line 9.

122. The Court entertained an advocacy of the sheriff's judgment, in a case with the parish, on the ground that the allowance was inadequate. (No objection seems to have been taken to the sheriff's jurisdiction.)—*Robertson*, 1795; *Dunlop*, 895.

123. The Sheriff's jurisdiction recognised, in an action at the instance of third parties (who, though not bound to maintain a pauper child, had made advances for its maintenance), against the kirk-session for relief of their advances.—*Howie v. Kirk-Session of Arbroath, &c.*, 25th January 1800; 12 *F. C.* 357; *Mor. No. 1, Apx. Poor*; *Dunlop*, 376, 83, 5, 7, 96, 459.

124. Action sustained before the sheriff, at the instance of one parish against three others, for determining which was liable to maintain a pauper, and for obtaining relief.—*Rescobie v. Aberlemno*, 28th November 1801; 13 *F. C.* 14; *Mor.* 10589; *Dunlop*, 378, 83, 7, 8, 96, 459.

125. Actions at the instance of third parties, for relief of their necessary advances in support of paupers, may competently be brought before the sheriff.—*Ettrick*, 14th February 1824; 2 *S.* 716; *Dunlop*, 374.

126. The heritors and kirk-session in their administration of the poor-laws, are subject to the control of the Supreme Court.—*Higgins v. Kirk-Session of the Barony Parish, Glasgow*, 9th July 1824; 3 *S.* 239 (*N. E.* 168), 21 *F. C.* 588; *Dunlop*, 360, 375. See *New Act*, p. 146, lines 3 and 10.

127. The court intimated an opinion, that a summons of aliment at the instance of a pauper against the parish, is

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an incompetent mode of procedure, but sustained an advocacy of the kirk-session's judgment.—*Higgins v. Kirk-Session of the Barony Parish, Glasgow*, 9th July 1824; 3 S. 239 (N. E. 168); 21 F. C. 588; Dunlop, 360, 375.

128. Direct actions for *permanent aliment, at the instance of the party requiring support*, held to be competent only before the Court of Session; and observed, that the decision in *Wilson's case* [18th February 1825; 3 S. 547] is not to be looked to as an authority on this point, though there may be cases where an inferior judge might award some provision, in the meanwhile, to prevent a person from starving, notwithstanding his inability to entertain a regular action for continued aliment.—*Jackson*, 3d March 1825; 3 S. 610; Dunlop, 374. See No. 7; also New Act, sect. 73, p. 144, line 19.

129. Where the administrators of the poor improperly neglect their duty, or refuse to give judgment on an application for relief, or are otherwise guilty of malversation in office, a competent remedy is by petition and complaint to the Court of Session.—*Telford*, 10th March 1826; 4 S. 545; Dunlop, 453 and 463. See New Act, sect. 73, p. 144, line 19, and p. 159, line 29.

130. The sheriff has jurisdiction to ordain the heritors and kirk-session of a parish, who have not taken a claim into consideration, or given any deliverance thereon, to meet and consider whether the claimant is entitled to aliment, and to allow a proof of the settlement of the pauper, in order to enable him to determine whether he will so order them to meet; and a meeting pending the discussion, approving of the conduct of the minister in verbally refusing relief and resisting the pauper's application to the sheriff, will not alter the case.—*Kirk-Session of Glassford v. Orr*, 10th July 1827; 5 S. 921 (N. E. 855); 2 F. 633, and 9th July 1831; 9 S. D. B. 928; Dunlop, 459; Monypenny, 94. See New Act, sect. 73, p. 144, line 19.

131. Observed, that a summary application to the justices, is competent against the father of a bastard, for his

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incarceration, until he finds security to relieve the parish of its maintenance; but he must be first duly cited, and the paternity admitted or proved.—*Pollock v. Craill*, 12th November 1829; 8 S. 1; 5 F. 1; *Dunlop*, 397. See New Act, sect. 80, p. 156, line 20; see also p. 168 and 169.

132. Observed, that an action by a pauper, against a kirk-session, for determining whether or not he has acquired a settlement, so as to be entitled to relief, ought to be raised, in the first instance, before the sheriff, and not before the supreme court.—*Morrison*, 14th January 1831; 9 S. 269; *Lord Glenlee*, in *Glassford*, 10th July 1827; 5 S. 924; *M'Glashan*, on *Aliment*, p. 113. See New Act, sect. 73, p. 144, line 19.

133. The sheriff has jurisdiction to entertain an action by a third party, in whose hands a child has been left destitute, to have the heritors and session ordained to take it off his hands, or failing their doing so, to pay an adequate aliment.—*Orr v. Glassford*, 9th July 1831; 9 S. 928.

134. Action of recourse by a third party, who was maintaining a pauper child, may be brought against the parish before the ordinary civil courts, without advocating, or even applying for, a judgment of the kirk-session.—*Matheson*, 22d December 1831; 10 S. 183; *Dunlop*, 459.

135. The sheriff has no power to alter, or review, the orders, or judgments of the heritors and kirk-session, in relation to the assessment for the poor, even when called on to enforce the same, his duty being merely ministerial; and if such orders or judgments are to be complained of, they must be brought under review of the Court of Session.—*Calder v. Trotter*, 8th June 1833; 11 S. 694; also *Pollock*, 12th November 1833; 12 S. 14; *Dunlop*, 436. See No. 7; also New Act, sect. 73, p. 144, line 19.

136. The Court of Session will review the mode of assessment, if palpable injustice be done thereby.—*Crawford*, 31st May 1838; 16 S. 1072; 13 F. 748; *Dunlop*, 417, 8.

137. Held by a majority of the court, that it is competent generally to bring under the review of the Court of

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Session, the determinations of the heritors and kirk-session, with regard to allowances for the poor.—Elsbeth Pryde or Duncan *v.* Parish of Ceres, 14th February 1843; 5 Dunlop, 552. See the New Act, sect. 75, p. 146, line 10.

138. Held that, after an allowance for a poor person has been fixed by the heritors and kirk-session, on due inquiry, it is competent to bring under review of the Court of Session, by advocacy, the question as to the adequacy of such allowance, even though it cannot be shewn to be elusory.—Elsbeth Pryde or Duncan *v.* Parish of Ceres, 14th February 1843; 5 Dunlop, 552. See New Act, sect. 75, p. 146, line 10.

139. Opinion, that liability to pay rates in a parish, or relationship to any of its heritors, are not sufficient grounds for the declinature of a judge in a case affecting the parish funds, where the disqualification, if sustained, would not leave a quorum of the court to pronounce judgment.—Murray, 5th March 1847; Jurist, 19, 363.

140. Held competent for a pauper (without any previous certificate of the board of supervision, under section 75 of the New Act), to advocate a deliverance pronounced by the *heritors* and *kirk-session* of a parish, rejecting an application for relief *prior in date to the passing of the act*.—Gunn *v.* St Cuthbert's, 6th March 1847; Jurist, 19, 390. See p. 146, note.

See also Summary of Sheriff Court Decisions, p. 93.

VII. MISCELLANEOUS.

141. When the sacrament is not administered, the sums allotted for providing communion elements, which have not been paid to the minister, must be thrown into the poor's fund; but, if paid, an action of repetition will not lie.—Birnie, 29th November 1678; M. 2489; Abdie, 21st July 1713; M. 2490.

142. The mother of a male bastard is entitled to its

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custody, till it be seven years of age.—Oliver, 7th March 1778; M. 444. See 76, 143.

143. Found that the mother is entitled to the custody of a female bastard child, and to aliment for it from its father, till it be ten years of age.—Glendinning, 19th November 1782; M. 445; Short, 21st February 1765; Mor. 442. See 76, 142.

144. An annexation of parishes, *quoad sacra tantum*, does not affect or transfer the previous civil rights and obligations of the respective parishes with regard to maintenance of the poor.—Thomson v. Pollock, 17th November 1808; 15 F. C. 7; Dunlop, 410. See 88.

145. The court was unanimously of opinion, that the act 1579, c. 74, is not in desuetude.—Cochrane v. Manson, 11th February 1823 (2 S. 201). See New Act, sect. 79, p. 156, lines 10 and 30; Dunbar, 4th July 1833; 11 S. D. B. 879.

146. Where a parish has alimented a person, having property of his own, without taking from him a conveyance thereto, it cannot have recourse on such property after his death, except perhaps in the case of a fatuous person, who can grant no conveyance.—M'Lachlan, 25th January 1828; 6 S. 443; Dunlop, 397.

147. A will contained the following provisions: "Any money left, after paying all expenses, I wish may be laid out on charities: I leave and bequeath to A. B. L.200, with power to see this will executed;" held that the legacy of the residue was not null by reason of uncertainty, and that A. B. had power to select the objects of charity, and distribute the funds.—Dundas, 27th January 1837; Shaw, 15, 427.

148. Collections at dissenting churches are at the sole disposal of the congregation by whom they are supplied.—Hill, June 19, 1739; M. 8011.—The ordinary collections at doors of *quoad sacra* churches connected with the Establishment, are in the same situation as collections at pa-

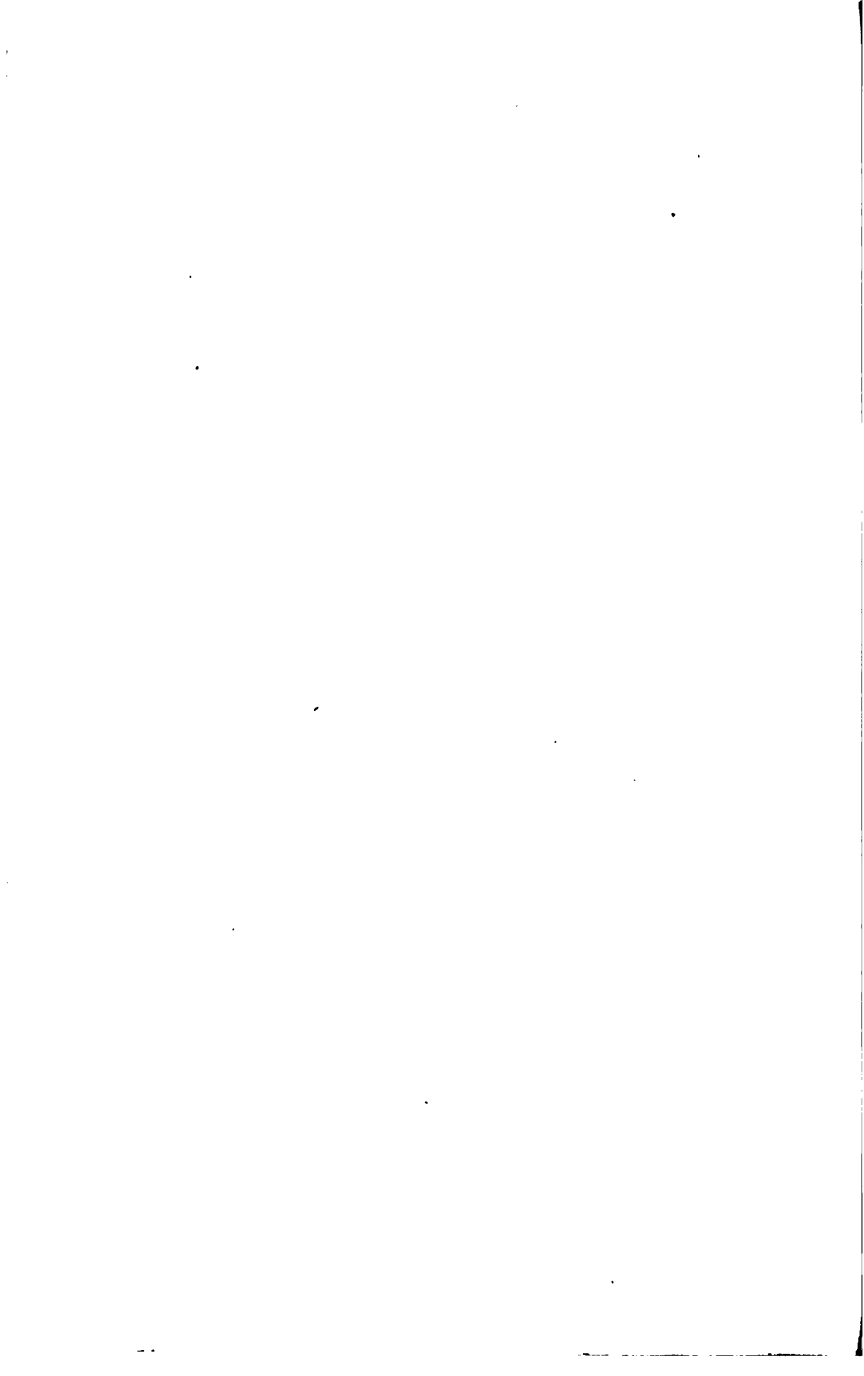
VII. *Miscellaneous.*

rish churches.—Panmure, 30th May 1839; 1 D. B. M. 840. See p. 130, l. 6.

149. A feuar in a *landward parish*, who held, under a charter, by which his superior bound himself to relieve the feuar “ of all feu, teind, and blench duties, ministers’ and schoolmasters’ stipends and salaries, building, repairing, and upholding of kirk and kirkyard dykes, ministers’ manses, schoolhouses, future augmentations, and for all cesses, taxations, highway money, and *other public burdens* whatever, due or payable forth of, or that anywise may be imposed upon, the land and others above mentioned, in all time coming ;” held entitled to relief from the superior for poor-rates *assessed on the rental of the lands*.—Reid v. Williamson, 16th February 1843; Dunlop, 5, 644; Jurist, 15, 308.—The contrary was held in a similar case *within burgh*, in respect the poor-rates leviable within burgh under the statute 1579, c. 74 (p. 2, 30), “ are not an imposition upon land, but a personal tax, exigible in respect of inhabitancy.”—Sprot, 29th May 1829; Shaw, 7, 682.

150. Held that the expense of maintaining a poorhouse may be raised by assessment.—Scott, 19th January 1773; M. 10577. See also p. 133, *et seq.* See p. 23, 60.

See also Summary of Sheriff Court Decisions, p. 94.



SUMMARY OF DECISIONS IN THE SHERIFF COURTS.

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I. RELIEF.

1. An inspector ordained by the sheriff to afford interim relief, "including therein a house or lodging, or adequate means to pay for one."—Page 222.

2. Where a pauper resides in a parish different from that of his settlement, it is competent, under the new act, to apply for relief to either; and, on refusal, to bring his case before the sheriff, against the parish by which relief is refused.—Page 226.

3. A person who was regularly in receipt of parochial relief for an inmate and member of his family, having subsequently applied for an allowance to himself, which was refused, held that the sheriff's jurisdiction was excluded; and that the proper course was to apply for an increased allowance, and, if necessary, appeal to the board of supervision.—Page 228.

4. Procedure where the sheriff's order for interim relief is disobeyed, or the interim relief given is elusory.—Page 230.

5. Interim relief, when ordered by the sheriff, must be substantial, not evasive.—Page 236.

6. Held that a parish, which has a public asylum, in which it maintained a pauper, who was ultimately found to belong to another parish, was not entitled, in settling the claims for relief, to charge the full rates of board at which it is in use to contract with other parishes for the receipt of

I. Relief.

their paupers, which includes a profit on the establishment; but only the actual cost to itself of the pauper's maintenance.—Page 249.

7. The head of a house, which was supported at the common expense of the inmates, being on the poor-roll, and in regular receipt of permanent relief; held that it was incompetent for the other members of the family to complain to the sheriff on being refused a separate allowance, the sheriff holding that this was substantially a question as to the *adequacy* of relief.—Page 255.

8. A pauper who, on applying for relief, had been offered maintenance in a public hospital, held to have no ground for an application to the sheriff as having been refused relief under the 73d sect of the New Poor-Law Act.—Page 265. See Nos. 67 and 22.

9. An inspector, when applied to for relief by the wife of a bedrid pauper, having referred her to another parish, alleging that the pauper's house was a disputed boundary between his and the adjoining parish; and having failed "to make inquiry forthwith" into the circumstances of the applicant, in terms of the 70th section of the Poor-Law Act; and the pauper having made a complaint to the sheriff next day; held that the inspector had failed in his statutory duty, and the complaint sustained with expenses.—Page 288.

10. A pauper in receipt of parochial relief having refused, when required by the inspector, to answer certain questions contained in a printed schedule, and to execute a conveyance of her whole property, whether in possession or in expectancy, for repayment of the parochial board's advances; held by the sheriff, reversing a judgment of the sheriff-substitute, that the board was entitled to refuse farther alimient until these demands were complied with.—Page 278.

11. Held that a pauper who drew the rents of a small property belonging to her brother, a sailor, who had not been heard of for six years, was not bound to give authority to the inspector to uplift these rents as a condition of her receiving

II. *Parties Entitled to Relief.*

relief, nor to execute a conveyance of her eventual interest in the property as her brother's heir, there being no averment that he was dead.—Page 286.

12. Held, reversing a judgment of the sheriff-substitute, that while an applicant for relief is bound to answer personal inquiries, the parochial board and inspector are not entitled to devolve on the applicant the duty of filling up written answers in a printed schedule, nor to withhold relief on the ground that the applicant had failed to comply with such a demand.—Page 289.

13. Where a pauper, at the end of three months after the date of her application to the inspector, had not been admitted to regular relief, though she had received allowances at irregular intervals, to the amount of 13s. 6d.; held, that the relief to which she was entitled had been substantially refused, or, at least, unduly delayed, and that she was entitled to complain to the sheriff.—Page 270.

14. A married woman, deserted by her husband, having applied for parochial relief for an infant child, was offered admission for her child to the workhouse, on condition that she should accompany it, which she refused; held that it was incompetent to complain to the sheriff under section 73d of the statute, in respect there was not a "refusal to relieve."—Page 265. See No. 8.

15. Opinion intimated, that it is not a sufficient reason for refusing relief, that the pauper will not remove from another parish into the parish of settlement, that he may be "under the eye" of the inspector.—Page 264.

II. PARTIES ENTITLED TO RELIEF.

16. Held not a sufficient reason for a refusal of parochial relief, that the pauper had a son who was able to support her; but the right of the parish to operate its relief against the son reserved.—Page 207.

17. A female, 73 years of age, held to be, *from old age alone*, a proper object of parochial relief, and being sup-

II. Parties Entitled to Relief.

ported by the voluntary gifts of a relation, incapable of acquiring a settlement by residence after that age.—Page 212.

18. An unmarried female who was far advanced in pregnancy, though otherwise in good health, found entitled to relief, as one of the occasional poor, “until she shall be able to work for her own maintenance, and that of her child.”—Page 214.

19. A man, 70 years of age, and burdened with a wife and idiot daughter, who occupied a free house well furnished, and had from a seaman's fund, and as a postmaster, L.8 a-year, found to have a legal claim for parochial relief, though it was averred that he was proprietor of a house worth L.120, that the part of it which he did not himself require might be let for L.6 a-year, and that he had other children who were capable of contributing to his support,—reserving to the poor's board, if so advised, to require a conveyance of any property of which he might be possessed, and reserving also their claims for relief against the other children.—Page 216.

20. A bastard child, living with its mother and her husband, able-bodied persons—who did not allege that they had taken any steps to compel its acknowledged father to contribute to its support, or that he was unable to do so; held not a proper object of parochial relief.—Page 220.

21. Held that a man, aged 77, must be presumed to be infirm, and incapable of supporting himself by his own labour, and an averment that he had been offered work and wages at 6d. a-day, not relevant to exclude his claim of relief.—Page 221.

22. A man, 23 years of age, who had lost a leg, but otherwise in good health, and who had refused work offered by the inspector, held not a proper object of parochial relief.—Page 226.

23. Although the head of a family be able to work and to support himself, if any inmate of his family, whom he is legally bound to support, be disabled, and the earnings of the household as a whole be not sufficient for its support,

II. *Parties Entitled to Relief.*

they are to be regarded as proper objects of relief, and the head of the house may competently complain to the sheriff, if his application for relief has been refused.—Page 234.

24. A father, 76 years of age, found entitled to parochial relief, though it was admitted that he had a son, an inmate of his family, who earned 11s. per week, the son being burdened with the support of his mother, aged 70.—Page 241.

25. Where it was averred that a pauper had children, resident in his immediate neighbourhood, whose circumstances enabled them to support him, he was found entitled to parochial relief, “until aliment shall be procured for him elsewhere,” on condition of his assigning to the parish, at its expense, any claim which he might have against his children.—Page 242.

26. Circumstances in which it was held (reversing the sheriff-substitute’s judgment) that a mother, before being entitled to parochial relief, was bound to use diligence against her son to compel him to contribute to her support.—Page 254.

27. The head of a house, which was supported at the common expense of the inmates, being on the poor-roll, and in regular receipt of permanent relief; held that it was incompetent for the other members of the family to complain to the sheriff on being refused a separate allowance, the sheriff holding that this was substantially a question as to the *adequacy* of relief.—Page 255.

28. Held, that a pauper was entitled to parochial relief, although she had a joint-right with her children to certain property sufficient to maintain her, in respect it was not averred that she could dispose of it without their consent, or that they were willing to maintain her, or to consent to a sale, so as to make the property immediately available for her support, reserving the recourse of the parochial board against such property and against her children.—Page 277.

29. A girl of 17, living with her father, a respectable farmer, having had a bastard child to a servant boy of from 15 to 17, both being in good health, and no legal proceed-

III. *Settlement and Liability of Parish.*

ings having been taken against the bastard's putative father ; held not a proper object of parochial relief.—Page 258.

30. Held, that the mother of a bastard, who refuses to accept an offer by its putative father, a married man, to receive the child and maintain it in his own family, is not entitled to insist in a claim for parochial relief on account of the child.—Page 256. [But see *Weepers*, 20th June 1844 ; B. M. Y., p. 67, No. 76.]

31. Question.—Whether a woman, 24 years of age, in good health, and able to work, can maintain a claim for parochial relief on account of her having one illegitimate child to support ?—Page 256.

32. (1.) A female, 23 years of age, having a bastard child two years of age, and having failed to establish the paternity of the child in an action against the alleged father, held not entitled to parochial relief for the child, nor to a proof of her inability to maintain it, she being able-bodied and in good health.

(2.) *Observed*, that if the infant had been at the breast, she might have been entitled to relief as one of the occasional poor.

(3.) Opinion intimated that the able-bodied are not entitled to relief under any circumstances. Page 261. See also note, p. 138.

III. SETTLEMENT AND LIABILITY OF PARISH.

33. Held not a sufficient reason for a refusal of parochial relief, that the pauper had a son who was able to support her ; but the right of the parish to operate its relief, against the son, reserved.—Page 207.

34. A person, not alleged to have become a proper object of parochial relief prior to the passing of the New Poor-Law Act (4th August 1845), is not entitled to found on a settlement alleged to have been acquired (before the passing of that act) by a residence of three years.—Page 210.

35. A woman having been supported in Scotland for many

III. *Settlement and Liability of Parish.*

years by her son, a domiciled Englishman, who was not alleged to have been born or to have resided in Scotland; held, that the son's obligations were to be determined by the law of England; and, 2d, It not being averred that, by English law, he was under a legal obligation to provide for his parent; held that, in a question of settlement, his contributions to his mother were to be regarded as voluntary gifts.—Page 212.

36. A settlement held to have been acquired by residence, although the party, during the whole period thereof, was maintained by the voluntary gifts of a relation, not liable in law for her support, it being admitted that the party was then free from disease and infirmity, and not otherwise a proper object of parochial relief.—Page 212.

37. A female, 73 years of age, held to be, *from old age alone*, a proper object of parochial relief, and being supported by the voluntary gifts of a relation, incapable of acquiring a settlement by residence after that age.—Page 212.

38. The settlement of a bastard, whose mother was also a bastard, determined by that of its maternal grandmother, the mother having established no separate settlement for herself.—Page 215.

39. A minor, the child of a parish pauper, and not alleged to have had any separate means of maintenance; held not to have acquired a settlement by residence while living in family with the pauper.—Page 215.

40. Opinion intimated, that, when a woman marries, having an infant bastard by another man, its settlement, following hers, attaches through her to her husband's parish.—Page 219.

41. Where a pauper resides in a parish different from that of his settlement, it is competent, under the New Act, to apply for relief to either; and, on refusal, to bring his case before the sheriff, against the parish by which relief is refused.—Page 226.

42. Opinion intimated,—(1st), That where a settlement has been acquired by residence, liberating the parish of birth,

III. *Settlement and Liability of Parish.*

and has been subsequently lost without any new settlement by residence being established, the settlement of birth thereupon revives.—Page 231.

(2d). That, under the New Act, continuous non-residence for five years liberates a parish in which a settlement had been previously acquired by residence, if the applicant had not become a proper object of parochial relief prior to the passing of the act.—Page 231.

43. Circumstances in which a temporary absence was held insufficient to interrupt the acquirement of a settlement by residence.—Page 237.

44. A mother having acquired a settlement by residence after her husband's death, found to have thereby acquired the same settlement for an adult daughter, who, by reason of fatuity, necessarily remained a member of her family, unemancipated.—Page 240.

45. A person advanced in life, but contributing, in some considerable degree, by her own work, to her support, held capable of acquiring a settlement, by residence, while receiving aid from her lawful children, they being bound in law to maintain her.—Page 243.

46. A child, born in Scotland (whose parents never had any settlement in Scotland), having been maintained by a parish with which it had no connexion, that parish is entitled to relief from the parish of birth.—Page 246.

47. A child, having been born in a charitable maternity hospital, to which the mother had voluntarily come from another parish a few hours before its birth, and in which she remained seventeen days afterwards; held that, in a question of settlement, the child must be dealt with as if it had been brought forth at the place of its parents' *residence* at the time, although they never had a settlement there, and it was in a different parish from the actual place of birth.—Page 247.

48. Special circumstances under which the receipt of temporary parochial relief by a wife, while living apart from her

III. *Settlement and Liability of Parish.*

husband, was held insufficient to disqualify him for acquiring a settlement by residence.—Page 249.

49. Held that, under the late statute (sec. 70), the parish in which application for interim support is first made and allowed must continue to provide it (notwithstanding the pauper's voluntary removal to another parish) so long as that same state of destitution which warranted the original claim, subsists continuously.—Page 251.

50. Where the parent's settlement cannot be discovered, casual birth in a parish fixes a settlement on that parish, although the parents had no residence there.—Page 252.

51. Where a farm-servant, residing regularly in his master's house for the period necessary to acquire a settlement, had, during the same period, maintained a house for his wife and family in a different parish; held, with considerable hesitation, that the former must be regarded as the parish of his settlement, and liable, on his desertion, to relieve the latter of the burden of maintaining his wife and family.—Page 273.

52. Circumstances in which a birth settlement was held to be acquired in a parish where the birth did not actually take place.—Page 276:

53. A person who maintained himself by keeping a toll-bar, during a residence of the requisite duration, held to have thereby acquired a settlement by residence, though he was above 80 years of age, and unfit for active labour, during the whole period of his residence.—Page 296.

54. The settlement of a legitimate child held to be in the parish in which its father had a settlement by parentage (through the birth and residence of *his* father), in preference to the parish in which the child itself was born.—Page 300.

55. Circumstances in which a settlement by residence, liberating a previous settlement, was held to have been established.—Page 303.

IV. *Assessments.*—V. *Jurisdiction and Process.*

IV. ASSESSMENTS.

56. Held that, in an assessment *levied on heritage*, a manse and glebe are subject to assessment.—Page 225.

V. JURISDICTION AND PROCESS.

57. Circumstances in which an application to the sheriff having been improperly presented in name of an idiot, her father was allowed to sist himself as a pursuer, and action sustained at his instance, but no expenses allowed.—Page 216.

58. Circumstances in which a letter alleged to have been granted by a pauper disclaiming his complaint to the sheriff, was disapproved of, and disregarded.—Page 221.

59. Held that a pauper, who had not been admitted to the poor's roll, was not debarred from complaining to the sheriff, by his having received small sums of interim relief.—Page 221.

60. Where a pauper resides in a parish different from that of his settlement, it is competent, under the New Act, to apply for relief to either; and, on refusal, to bring his case before the sheriff, against the parish by which relief is refused.—Page 226.

61. A person who was regularly in receipt of parochial relief for an inmate and member of his family, having subsequently applied for an allowance to himself, which was refused; held that the sheriff's jurisdiction was excluded, and that the proper course was to apply for an increased allowance, and, if necessary, appeal to the board of supervision.—Page 228.

62. Procedure where the sheriff's order for interim relief is disobeyed, or the interim relief given is elusory.—Page 230.

63. Interim relief, when ordered by the sheriff, must be substantial, not evasive.—Page 236.

64. Where a man was prosecuted on a charge of deserting

VI. *Miscellaneous.*

his wife, and denied the marriage, a proof of the marriage allowed by the sheriff, to expiscate his jurisdiction; and the marriage having been proved by witnesses, the accused was convicted.—Page 241.

65. An inspector, when applied to for relief by the wife of a bedrid pauper, having referred her to another parish, alleging that the pauper's house was a disputed boundary between his and the adjoining parish, and having failed "to make inquiry forthwith" into the circumstances of the applicant, in terms of the 70th section of the Poor-Law Act, and the pauper having made a complaint to the sheriff next day; held that the inspector had failed in his statutory duty, and the complaint sustained, with expenses.—Page 288.

66. Where a pauper, at the end of three months after the date of her application to the inspector, had not been admitted to regular relief, though she had received allowances, at irregular intervals, to the amount of 13s. 6d.; held, that the relief to which she was entitled had been substantially refused, or, at least, unduly delayed, and that she was entitled to complain to the sheriff.—Page 270.

67. A married woman, deserted by her husband, having applied for parochial relief for an infant child, was offered admission for her child to the workhouse, on condition that she should accompany it, which she refused; held that it was incompetent to complain to the sheriff under section 73d of the statute, in respect there was not a "refusal to relieve."—Page 265. See No. 8.

VI. MISCELLANEOUS.

68. A woman having been supported in Scotland for many years by her son, a domiciled Englishman, who was not alleged to have been born or to have resided in Scotland; held (1.), That the son's obligations were to be determined by the law of England; and (2d), It not being averred that by English law he was under a legal obligation to provide for his parent; held that, in a question of settlement, his con-

VI. *Miscellaneous.*

tributions to his mother were to be regarded as voluntary gifts.—Page 212.

69. The aliment of a bastard, born by a woman to another man before her marriage, becomes a debt against her husband, on her marriage.—Page 220.

70. An inspector ordained by the sheriff to afford interim relief, "including therein a house or lodging, or adequate means to pay for one."—Page 222.

71. Interim relief, when ordered by the sheriff, must be substantial, not evasive.—Page 236.

72. Rates having been levied in error by a parish over a territory which was ultimately found to be beyond its bounds, no ground for permanently burdening it with the paupers living in that territory.—Page 244.

73. A pauper in receipt of parochial relief having refused, when required by the inspector, to answer certain questions contained in a printed schedule, and to execute a conveyance of her whole property, whether in possession or in expectancy, for repayment of the parochial board advances; held, by the sheriff, reversing a judgment of the sheriff-substitute, that the board was entitled to refuse farther aliment until these demands were complied with.—Page 278.

74. Held that a pauper who drew the rents of a small property belonging to her brother, a sailor, who had not been heard of for six years, was not bound to give authority to the inspector to uplift these rents as a condition of her receiving relief, nor to execute a conveyance of her eventual interest in the property as her brother's heir, there being no averment that he was dead.—Page 286.

75. Held, reversing a judgment of the sheriff-substitute, that while an applicant for relief is bound to answer personal inquiries, the parochial board and inspector are not entitled to devolve on the applicant the duty of filling up written answers in a printed schedule, nor to withhold relief on the ground that the applicant had failed to comply with such a demand.—Page 289.

NEW POOR-LAW ACTS.

ANNO OCTAVO & NONO VICTORIÆ REGINÆ,
CAP. LXXXIII.

An Act for the Amendment and better Administration
of the Laws relating to the Relief of the Poor
in Scotland.

[4th August 1845.]

Interpretation of Words and Expressions used in the Act—
“*Burgh*”—“*Sheriff*”—“*Lands and Heritages*”—
“*Oath*”—“*Owner*”—“*Persons.*”

WHEREAS it is expedient that the laws relating to the relief of the poor in Scotland should be amended, and that provision should be made for the better administration thereof: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That the following words and expressions, when used in this act, shall in the construction thereof be interpreted as follows, except where the nature of the provision or the context of the act shall exclude or be repugnant to such construction. (That is to say), The word “*burgh*” shall include and apply to cities, burghs, and towns which are royal

burghs, or which send or contribute to send a member to Parliament; "Sheriff" shall include and apply to Sheriff-Substitute and Stewart-Substitute; the words "lands and heritages" shall extend to and include all lands, fishings,
5 fresh waters, ferries, quays, wharfs, docks, canals, railways, mines, minerals, quarries, coal works, lime works, brick works, iron works, gas works, factories, and manufacturing establishments, houses, tenements, shops, warehouses, mills, cellars, stalls, stables, gardens, yards, and all build-
10 ings and pertinents thereof; the word "oath" shall include the affirmation of a Quaker, Separatist, or Moravian; "owner" shall apply to liferenters as well as fiars, and to tutors, curators, commissioners, trustees, adjudgers, wad-setters, or other persons who shall be in the actual receipt
15 of the rents and profits of lands and heritages; "persons" shall extend to a body politic, corporate, or collegiate; and every word importing the singular only shall extend to several persons or things as well as one person or thing; and every word importing the plural shall be applied to
20 one person or thing as well as several persons or things; and every word importing the masculine gender shall extend to a female as well as a male.

Board of Supervision for Relief of the Poor established.

II. And be it enacted, That a Board of Supervision shall be and is hereby established for the purposes of this act,
25 and the said board shall consist of the following persons (*videlicet*): the Lord Provost of Edinburgh, the Lord Provost of Glasgow, the Solicitor-General of Scotland, the Sheriff-Depute of the county of Perth, the Sheriff-Depute of the county of Renfrew, the Sheriff-Depute of the county
30 of Ross and Cromarty, all for the time being, together with three other persons, whom it shall be lawful for her Majesty, her heirs and successors, by warrant under the sign manual, to appoint; and it shall also be lawful for her Majesty, her heirs and successors, to supply any vacancy
35 which may occur in the said board by removal, by death, or otherwise, of any of the said three persons; and the

said board shall be styled “ The Board of Supervision for Relief of the Poor in Scotland ;” and the said board may sit from time to time and at such places as they shall deem expedient.

Members of Board to derive no Emolument—Their Expenses to be paid.

III. And be it enacted, That the members of the said 5 board shall derive no profit or emolument for the discharge of the duties of their office, except as hereinafter mentioned, and shall not be personally responsible for any thing done *bona fide* in the execution of this act, or in the exercise of the powers therein contained : Provided always, 10 that any necessary expenses incurred by the board or by members thereof, or committees or commissioners authorised or appointed by the board as hereinafter provided, shall be deemed as part of the incidental expenses attending the execution of this act, and be paid accordingly ; and 15 an account of all expenses of the said board shall be annually laid before Parliament.

One paid Member and Secretary to the Board.

IV. And be it enacted, That it shall be lawful for her Majesty, her heirs and successors, to nominate one of the three members of the said board of supervision to be ap- 20 pointed by her Majesty as aforesaid, who shall be paid, and also to appoint a fit person to be secretary to the said board, who shall also be paid, and to supply any vacancy which may occur in the said office of secretary ; and such paid member of the board of supervision and such secretary 25 shall each receive an adequate salary of such amount as shall from time to time be regulated and approved by the Lord High Treasurer or the Commissioners of her Majesty's Treasury of the United Kingdom of Great Britain and Ireland, or any three or more of them ; and such secretary 30 shall find sufficient security for his intromissions and management to the satisfaction of the said board, and shall

be liable to be removed by her Majesty on the recommendation of the said board ; and the Sheriffs of the said three sheriffdoms of Perth, Renfrew, and Ross and Cromarty shall each receive the sum of one hundred pounds sterling 5 per annum, in addition to their present salaries, so long as they continue to act as members of the said board.

Meetings of the Board—Paid Member of Board of Supervision to attend regularly.

V. And be it enacted, That the said board of supervision shall meet at Edinburgh in the Court-Room of the First Division of the Court of Session, upon the twentieth 10 day of August next, or upon the first convenient day within ten days thereafter, of which due notice shall be given by the secretary to each of the members, and shall thereafter hold two general meetings in each year, one upon the first Wednesday in February, and the other upon the first 15 Wednesday in August ; and at such first meeting, and at all other meetings to be held in pursuance of this act, three shall be sufficient to act ; and the said board shall have power to adjourn for such time and to such place as they shall see fit ; and it shall be lawful for the said board to 20 hold special or *pro re nata* meetings, which may be called by the secretary, provided that such notice shall be given in writing by the secretary as the board shall direct ; and that all notices of special or *pro re nata* meetings shall specify the business or matter on which such meetings are called ; 25 and it shall be the duty of the paid member of the said board not only to attend at the general and the special or adjourned meetings, but to give regular attendance for the purpose of conducting the business of the said board ; and the board shall have chambers in Edinburgh at which the 30 ordinary business of the board shall be conducted, and at which the meetings of the board may be held.

Board may name Committees.

VI. And be it enacted, That the said board shall have power, as often as they may deem fit, to appoint any two or more of their number as a committee for the purposes of this act, and if more than two to fix the number of such committee that shall be sufficient to transact business; and 5 it shall be lawful for such committee, in transacting the business committed to them, to exercise all the powers necessary for that purpose which are by this act given to the board of supervision; and such committee shall be bound to report to the board at such time or times as the board 10 shall direct, and failing such direction shall report to the said board at its next general statutory meeting.

Board may make General Rules.

VII. And be it enacted, That it shall be lawful for the said board from time to time, as they shall see occasion, to make general rules and regulations for conducting the busi- 15 ness of the said board, and for exercising the powers and authorities thereof, and to alter such rules and regulations: Provided always, that such rules and regulations and alterations, or a copy thereof, shall be transmitted to one of her Majesty's principal secretaries of state for his sanction 20 and approval, and for such additions or alterations as he may deem necessary; and no rules or regulations or alterations as aforesaid shall be effectual, except such as shall have been approved of by the said secretary of state, who shall be understood to have approved of all such rules and 25 regulations and alterations aforesaid as shall have been transmitted for his sanction and approval, if no intimation to the contrary be made to the board of supervision within twenty-one days from the date of such transmission; and a copy, signed and certified by the secretary of the board 30 of supervision, of the rules and regulations and alterations approved as aforesaid, shall be evidence of such rules, regulations, and alterations in any court of law or justice.

Board to record their Proceedings, and make annual Reports on the State of the Poor.

VIII. And be it enacted, That the said board of supervision shall make a record of their proceedings, in which shall be entered minutes of all meetings held by them, or any committee appointed by them, and all resolutions passed
5 and orders made by them, and all other matters which the board may judge proper ; and the said board shall once in every year submit to one of her Majesty's principal secretaries of state a general report of their proceedings, which report shall contain in particular a full statement as to the
10 condition and management of the poor throughout Scotland, and the funds raised for their relief ; and every such report shall be laid before both Houses of Parliament within six weeks after the receipt of the same by such principal secretary of state, if Parliament be then sitting, or if Par-
15 liament be not sitting, then within six weeks of the next meeting thereof.

Powers of the Board of Supervision to require Returns and examine Witnesses.

IX. And be it enacted, That it shall be lawful for the said board of supervision to inquire into the management of the poor in every parish or burgh in Scotland ; and for
20 this purpose the said board is hereby empowered to make inquiries, and require answers or returns to be made to the said board, upon any question or matter connected with or relating to the relief of the poor, and also by a summons, signed by one of their number, or by the secretary, to re-
25 quire the attendance of all such persons as they may think fit to call before them upon any such question or matter, and to administer oaths to and examine upon oath all such persons, and to require and enforce the production, upon oath, of all books, contracts, agreements, accounts, and
30 writings, or copies thereof respectively, in anywise relating to any such question or matter, or in lieu of requiring such oath as aforesaid, the said board may, if they think fit, re-

quire any such person to make and subscribe a declaration of the truth of the matters respecting which he shall have been or shall be so examined.

Board may authorise special Inquiries to be made.

X. And be it enacted, That it shall and may be lawful for the said board, whenever it may seem fitting to them, 5 to authorise and empower for a limited time one of the members thereof to conduct any special inquiry in any part of Scotland, and to report thereon to the board; and such member, so authorised and empowered, shall be entitled to summon and examine on oath witnesses and havers, and 10 to exercise all such other of the powers by this act given to the board of supervision as may be necessary for conducting such inquiry, and such member shall be reimbursed by the said board for all expenses necessarily incurred by him in conducting such inquiry, and such expenses shall 15 be deemed part of the expenses attending the execution of this act, and be paid accordingly.

Board may appoint Commissioners for conducting special Inquiries.

XI. And be it enacted, That it shall and may be lawful for the said board of supervision, whenever it may seem fitting to them, with the consent of one of her Majesty's 20 principal secretaries of state, or of her Majesty's advocate for Scotland, or whenever the said board may be thereunto required by one of her Majesty's said secretaries of state, or her Majesty's said advocate, to appoint some person, not being a member of the board, but being a member of the 25 faculty of advocates, or a duly qualified medical practitioner, or an architect or surveyor, or two or more of such persons, to act as a commissioner or commissioners for the purpose of conducting any special inquiry for a period not exceeding forty days, and to report thereon; and the said 30 board shall delegate to every person so appointed for the purpose of conducting such inquiry, all such of the powers

of the said board as they may deem necessary or expedient for summoning or examining witnesses and havers, and otherwise conducting such inquiry; and every such appointment shall be subject to the approval of one of her Majesty's said secretaries of state, or of her Majesty's said advocate; and every person so appointed as aforesaid to conduct any special inquiry shall, before he enter on the execution of his duties, take an oath *de fidei administratione officii*, which oath may be administered to him by any member of the board, or any one of the judges of the Court of Session, or the sheriff of any county; and it shall not be necessary to notify the appointment of any such commissioner otherwise than by intimating the same by letter under the hand of the secretary, or of any member of the board, to the sheriff of the county within which the inquiry in question is to be made: and every such commissioner shall be reimbursed by the said board for all expenses necessarily incurred by him in conducting such inquiry, and shall also receive such reasonable remuneration for his time and trouble as may have been agreed upon between him and the said board, and approved of by her Majesty's said secretary of state or advocate; and failing of any such agreement the amount of the remuneration shall be fixed by the Lord High Treasurer, or the Commissioners of her Majesty's Treasury, or by such person or persons as he or they shall name.

Board may allow Expenses of Witnesses, &c.

XII. And be it enacted, That it shall be lawful for the said board of supervision, in any case where they see fit, to order and allow such expenses of witnesses, and such expenses of or concerning the production of any books, contracts, agreements, accounts, or writings, or copies thereof, to or before the said board or committee thereof or commissioner, as such board may deem reasonable; and such expenses so ordered and allowed shall be deemed part of the incidental expenses attending the execution of this act, and be paid accordingly.

Penalties on Parties giving false Evidence, or refusing to obey Summons of the Board.

XIII. And be it enacted, That if any person, upon any examination on oath* under the authority of this act, shall wilfully give false evidence, he shall be deemed guilty of perjury, and shall be liable to the pains and penalties thereof; and in case any person shall wilfully refuse to attend in obedience to any summons of the said board of supervision or committee thereof, or member or commissioner authorised or appointed by the board as aforesaid, or to give evidence, or shall wilfully refuse to produce any books, contracts, agreements, accounts, and writings, or copies of the same, which may be required to be produced before the said board or committee, or member or commissioner, or shall wilfully neglect or disobey any of the orders of the said board or committee, or member or commissioner, or be guilty of any contempt of the said board or committee, or member or commissioner, such person being thereof lawfully convicted shall forfeit and pay, for the first offence any sum not exceeding five pounds, for the second and every subsequent offence, any sum not exceeding twenty pounds, nor less than five pounds.

Power of Board to appoint Clerks, &c.

XIV. And be it enacted, That the said board of supervision shall be and is hereby empowered from time to time to appoint all such clerks, messengers, and officers, as they shall deem necessary, and from time to time, at the discretion of the said board, to remove such clerks, messengers, and officers, or any of them, and to appoint others in their stead; provided that the amount of the salaries of such clerks, messengers, and officers shall from time to time be regulated by the Lord High Treasurer, or the Commissioners of her Majesty's Treasury, or any three or more of them; and the name of every person so appointed or removed as

* The words "on oath" are omitted by mistake in the copy of the act issued by the Board of Supervision.

aforesaid shall forthwith be intimated to one of her Majesty's principal secretaries of state for his approval, who shall be understood to approve of such appointment or removal if no notice to the contrary be received by the said
5 board within twenty-one days from the day of the date of such intimation.

Members of Board of Supervision may attend Meetings of Parochial Boards.

XV. And be it enacted, That it shall be lawful for any of the members or the secretary of the said board of supervision, or for any clerk or officer of the said board, provided
10 that such clerk or officer shall be duly authorised by a writing signed by two at least of the members of the said board of supervision, to attend and be present at the meetings of any parochial board for the management of the poor, and to take part in the discussions, but not to vote at such board.

Parishes may be combined—Board of Supervision may add other Parishes.

15 XVI. And be it enacted, That in every case in which it may appear to the board of supervision, on application by the parochial boards of any one or more adjoining parishes, or from a regard to the relative situation of two or more such parishes, or from any other circumstances, that the
20 administration of the affairs of the poor therein might be carried on with greater advantage to the said parishes, and to the poor therein, by the said parishes being combined for the purposes of this act, then the parochial boards of such parishes shall meet, on requisition to that effect by the
25 board of supervision, for the purpose of considering the proposed combination; and in every case where the parochial boards of two or more such parishes shall resolve that it is expedient and proper that such parishes shall be combined for all purposes connected with the management
30 of the poor, and the administration of the laws relating to

their relief, and for the purposes of raising the necessary funds for the relief and support of the poor, and also for the purposes of settlement, and where it shall be established to the satisfaction of the board of supervision, that it is expedient and proper that such parishes shall be so combined, it shall be lawful for the said board of supervision to resolve and declare that such parishes shall thenceforward be combined for the purposes aforesaid, and shall be considered as one parish so far as regards the support and management of the poor, and all matters connected therewith; and all expenditure in respect to the poor belonging to such combination of parishes shall be deemed and held to be the common expenditure of such combination of parishes, and be charged upon and paid out of the common and general fund to be raised for the relief of the poor over the whole of such parishes: Provided always, that, upon application by the parochial board of any parish adjacent to any such combination, it shall be lawful for the said board of supervision, if they see fit, due regard being had to the circumstances of the case, to resolve and declare that such parish shall be for the purposes of this act added to such combination from and after a date to be signified in the resolution of the said board of supervision, and such parish shall, from and after such date, be held in law to be a part of such combination in all matters relative to the relief of the poor, and subject in every respect to the provisions and regulations hereby made and provided in relation to combinations of parishes; and such resolution shall be forthwith published in such manner as the said board of supervision shall direct.

*Parochial Board of Managers of the Poor in Burghal
Parishes or Combinations.*

XVII. And be it enacted, That in every burghal parish or combination of parishes there shall be a parochial board of managers of the poor; and the whole administration of the laws for the relief of the poor shall be under the direction and control of such parochial board, on whom shall

devolve all the powers and authorities hitherto exercised by or vested in the magistrates of burghs in that behalf, or any other body or persons administering, or entitle to administer, the laws for the relief of the poor in any burgh or 5 burghal parish; and until it shall have been resolved, as hereinafter provided, to raise the funds requisite for the relief of the poor of such parish or combination by assessment, the board shall, in the case of a burghal parish, where there is no combination of parishes, consist of the persons who, if this 10 act had not been passed, would have been entitled to administer the laws for the relief of the poor in such parish, and shall, in the case of a combination of parishes, consist of the persons who, if this act had not been passed, would have been entitled to administer the laws for the relief of 15 the poor in the several parishes of which the combination is composed, or of such committees of their number as they may think proper to appoint; and when in any burghal parish or combination in which it shall have been resolved, as hereinafter provided, to raise the funds requisite for the 20 relief of the poor by assessment, the parochial board of such parish or combination shall be constituted and chosen as follows; (that is to say), the persons assessed for the support of the poor within the parish or combination shall elect, in manner aftermentioned, to be members of the 25 parochial board, such number of managers, not being more than thirty, as the said board of supervision, having due regard to the population and other circumstances of every such parish or combination, may from time to time fix, and possessing such qualification by the ownership or occupancy of lands and heritages of a certain annual value 30 within the parish or combination as the said board of supervision, having due regard to the population and other circumstances of every such parish or combination, may from time to time fix, such qualification being in no case fixed at a higher 35 annual value than fifty pounds, to be ascertained in manner hereinafter provided in regard to the qualification of voters; and the magistrates of the burgh shall nominate four persons to be members of the parochial board, and the kirk-session of each parish shall nominate not exceeding four

members of such kirk-session to be members of the parochial board: Provided always, that those parishes only shall be held to be separate parishes which at the date of this act are separate parishes for the purposes of settlement and relief of the poor: and that where there shall be in any such parish two or more kirk-sessions, the members of such several kirk-sessions shall meet together and nominate not exceeding four of their number to be members of the parochial board. 5

Board of Supervision to fix the Day for the first Election of Managers.

XVIII. And be it enacted, That where in any burghal parish or combination it shall have been so resolved to raise the funds requisite for the relief of the poor by assessment, and where the persons from whom such assessment is to be levied, and the amount payable by each, shall have been ascertained or determined as hereinafter provided, the board of supervision shall fix a day for the persons so assessed to elect such number of managers, duly qualified, to be members of the parochial board as shall be regulated by the board of supervision as aforesaid, and shall also fix a day or days for the magistrates and the kirk-session or kirk-sessions to nominate the persons to be by them respectively nominated to be members of the parochial board; and such managers and members, being elected or nominated, shall be entitled to act for the period of one year, and may be re-elected or re-appointed. 10 15 20

Mode of voting in Burghal Parishes or Combinations.

XIX. And be it enacted, That in all cases of the election of managers for the poor of any burghal parish or combination under this act, the votes shall be given or taken, collected and returned, in such manner and under such regulations as the board of supervision shall direct; and in every such election every person assessed for the support of the poor in such parish or combination shall be entitled 25 30

to vote, whether such assessment be made in respect of ownership or occupancy of lands and heritages, or in respect of means and substance; and it is hereby declared, that the owners of lands and heritages, the annual value of which shall be under twenty pounds, shall have each one vote; the owners of lands and heritages the annual value of which shall be twenty pounds but under forty pounds, two votes; the owners of lands and heritages the annual value of which shall be forty pounds but under sixty pounds, three votes; the owners of lands and heritages the annual value of which shall be sixty pounds but under one hundred pounds, four votes; the owners of lands and heritages the annual value of which shall be one hundred pounds but under five hundred pounds, five votes; the owners of lands and heritages the annual value of which shall be five hundred pounds and upwards six votes; and that all persons assessed as the occupants of lands and heritages, or assessed on means and substance, shall each have the same number of votes as an owner of lands and heritages assessed to the same amount for the support of the poor would have; and when any occupant shall also be the owner of lands and heritages, and assessed in both capacities, he shall be entitled to vote as well in respect of his ownership as of his occupancy; and when any person who is assessed on his means and substance shall also be an owner of lands and heritages, and assessed as such, he shall be entitled to vote as well in respect of his ownership as of his means and substance: Provided always, that no person shall for himself have more than six votes in all, and that no person shall be entitled to vote who shall have been exempted from payment of his rates or assessment for relief of the poor on the ground of inability to pay, or who shall not have paid all such rates and assessments assessed upon and due from him at the time of so voting.

Board of Supervision may divide Burghal Parishes or Combinations into Wards or Divisions for Elections.

XX. And be it enacted, that for the purpose of conduct-

ing the election of managers of the poor, it shall be lawful for the board of supervision to divide any burghal parish or combination into such and so many wards or divisions as they may deem expedient, and to determine and apportion the number of managers to be elected by every such ward or division, having due regard to the population and the value of property therein: Provided always, that no person shall be entitled to vote for the managers of the poor in any such ward or division unless he reside therein, or have a right to vote in respect of his ownership or occupancy of lands and heritages within such ward or division; nor shall any person give in any one ward or division, in respect of ownership or occupancy of lands and heritages a greater number of votes than he is entitled to in respect of lands and heritages in such ward or division; nor shall any person give in the whole of the wards or divisions into which a parish may be divided a greater number of votes than he would be entitled to have given if the parish had not been so divided.

Right of voting, how to be ascertained.

XXI. And be it enacted, That, for the purpose of ascertaining the number of votes to which each person is entitled, the books of the collector of the assessment for the poor shall be taken as the evidence of the annual value of the lands and heritages assessed, and of the amount for which each person is assessed.

Parochial Board in Parishes not Burghal or Combined.

XXII. And be it enacted, That in every parish not being a burghal parish, and not being part of any combination as aforesaid, there shall be in like manner a parochial board for the management of the poor of such parish; and the whole administration of the laws for the relief of the poor shall be under the direction and control of such parochial board, who shall have and exercise all the powers and authorities hitherto exercised by or vested in the heritors and kirk-session, or in the heritors, kirk-session, and magis-

trates, or any other body or persons administering or entitled to administer the laws for the relief of the poor in such parish, by virtue of any law or usage; and such parochial board shall be constituted as follows; (that is to 5 say,) in every such parish as aforesaid in which the funds requisite for the relief of the poor shall be provided without assessment, the parochial board shall consist of the persons who, if this act had not been passed, would have been entitled to administer the laws for the relief of the poor in 10 such parish; and in every such parish as aforesaid, in which it shall have been resolved, as hereinafter provided, to raise the funds requisite for the relief of the poor by assessment, the parochial board shall consist of the owners of lands and heritages of the yearly value of twenty pounds 15 and upwards, and of the provost and bailies of any royal burgh, if any, in such parish, and of the kirk-session of such parish, and of such number of elected members, to be elected in manner after mentioned, as shall be fixed by the board of supervision: Provided always, that no provost or 20 bailie or elder of the kirk-session shall, as such, be a member of such parochial board unless he is assessed for the poor; and provided also, that not more than six members of the kirk-session shall, as such, be members of such parochial board; and if the kirk-session shall consist of more 25 than six members, it shall be lawful for such kirk-session from time to time to nominate six of its members to be members of the parochial board, for such time as to the kirk-session shall seem fit; and it shall be competent for any heritor, being a member of the parochial board, to ap- 30 point, as heretofore, by a writing under his hand, any other person to be his agent or mandatory to act and vote for him at such board; and such appointment shall remain in force till recalled; and such writing of appointment is hereby declared to be valid and lawful, although the paper 35 whereon it is written should not be stamped.

Elected Members.

XXIII. And be it enacted, That in every such parish

as aforesaid in which it shall have been resolved to raise the funds for relief of the poor by assessment, and in which the persons from whom such assessment is to be levied, and the amount payable by each, have been ascertained or determined as hereinafter provided, it shall and may be 5 lawful for the persons so assessed, not being owners of lands and heritages of the yearly value of twenty pounds, or provost or bailies of any royal burgh in such parish, or members of the kirk-session, and as such members of the parochial board, to elect so many of their own number to 10 be members of the parochial board of such parish as shall be regulated and fixed from time to time by the board of supervision, due regard being had to the amount of the population, the number and residence of the other members of the parochial board, and the special wants and cir- 15 cumstances of each particular parish; and the said board of supervision shall also fix a day for the said persons to meet and choose such number of elected members of the parochial board as shall have been fixed by the board of supervision as aforesaid; and such elected members being 20 so appointed, shall be entitled to act for the period of one year, and may be re-elected: Provided always, that no person shall be entitled to act as an elected member unless he be assessed to the poor, and pay assessment to the parish.

Elected Members how to be appointed.

XXIV. And be it enacted, That on the day so to be 25 fixed by the board of supervision as aforesaid, and on the same day in each succeeding year, or on a day, as soon thereafter as may be, to be fixed by the board of supervision, the persons assessed as aforesaid shall meet for the purpose of appointing elected members of the parochial 30 board; and if they shall not agree in the choice of elected members, then it shall and may be lawful for the inspector of the poor, appointed in manner after mentioned, or in case of his absence or inability, for any person appointed by the parochial board to act for the occasion, to take in 35 writing and collect the votes of the persons entitled to vote

at such meeting, and to declare (according to the number prescribed by the board of supervision) those persons to be elected members who shall appear to have the majority of votes, and in the event of an equality the person paying
5 the largest amount of assessment shall be preferred; and at every such meeting, owners of lands and heritages within the parish under twenty pounds of yearly value shall each have one vote, and tenants or occupants of lands and heritages, and persons assessed upon means and substance,
10 if assessed to an amount less than is assessed upon an owner of lands and heritages of the yearly value of twenty pounds, shall each have one vote; and if assessed to an amount equal to that assessed upon an owner of lands and heritages of the yearly value of twenty pounds but under
15 forty pounds, shall each have two votes; and if equal to that assessed on an owner of lands and heritages of the yearly value of forty pounds, but under sixty pounds, shall each have three votes; and if equal to that assessed on an owner of lands and heritages of the yearly value of sixty
20 pounds, but under one hundred pounds, shall each have four votes; and if equal to that assessed on an owner of lands and heritages of the yearly value of one hundred pounds, but under five hundred pounds, shall each have five votes; and if equal to that assessed on an owner of
25 lands and heritages of the yearly value of five hundred pounds or more, shall each have six votes; and the books of the collector of the assessment in each parish shall be binding and conclusive for the purpose of ascertaining the number of votes to which any person shall be entitled in
30 respect of the ownership, occupancy, or means and substance upon which he is assessed; and where any person who is assessed as owner is assessed also as occupier, or on means and substance, he shall be entitled to vote as well in respect of such occupancy, or means and substance,
35 as of his being such owner: Provided always, that no person shall have more than six votes, and that no owner of lands and heritages of the yearly value of twenty pounds or upwards, and no provost, bailie, or member of the kirk-session, being a member of the parochial board, and no

person who shall have been exempted from the payment of his rates or assessments for the relief of the poor on the ground of inability to pay, or who shall not have paid all such rates and assessments assessed upon and due from him, shall be entitled to vote; and for the purpose of conducting the election it shall be lawful for the board of supervision to divide any parish into such and so many districts or divisions as they may deem expedient, and to determine and apportion the number of elected members to be elected by every such district or division, subject to the like conditions and restrictions as are hereinbefore provided in regard to the election of managers in burghal parishes or combinations.

*In Cases of Corporations or Joint Stock Companies,
who entitled to vote.*

XXV. And be it enacted, That in cases of lands and heritages being owned or occupied by any corporation, or any joint stock or other company, or by joint owners or joint occupants, no member of such corporation or proprietor of or interested in such joint stock or other company, and no such joint owner or joint occupant, shall, as such, be entitled to vote at the election of any member of a parochial board of any parish or combination: but any member or officer of such corporation, joint stock or other company, or any one of such joint owners or joint occupants whose name shall be entered by order of such corporation or company, or the governing body thereof, or of such joint owners or joint occupants, in the books of the parish or combination, in the manner that may be directed by the board of supervision, and who shall have complied with the regulations regarding voting, shall be entitled to vote in the same manner as if he were the owner or occupant of such lands and heritages.

Husbands may vote in right of their wives.

XXVI. And be it enacted, That in all meetings and

matters under this act the husbands of owners of lands and heritages shall be entitled to vote and act in right of their wives.

Disputes as to Elections how to be determined.

XXVII. And be it enacted, That any dispute which
5 may arise as to the validity of the election of any person
to be a member of the parochial board of any parish or
combination shall be determined by the sheriff of the coun-
ty in which such parish or combination, or the greater por-
tion of them, may be situate, upon petition in a summary
10 manner ; and the said sheriff shall hear the parties, and
investigate the matter in such a way as he may think pro-
per, and shall have power to call for such evidence, and
for the production of such documents, as he may think ne-
cessary, provided that no written pleadings shall be al-
15 lowed, and no record shall be made of the proceedings ; and
the decision by the said sheriff shall be final, and shall not
be liable to appeal, or to suspension, advocacy, or reduc-
tion, or any other form of review ; and it shall be lawful
for the said sheriff to order the expenses of all such pro-
20 ceedings to be paid by such parties and in such manner as
to him may seem equitable : Provided always, that it shall
not be lawful for any person to question the validity of any
election under this act, unless a notice in writing of his in-
25 tention so to do be served on the returning officer at the
time of making the return, or within forty-eight hours
from the time when such return shall have been made.

Party returned may act in the meantime.

XXVIII. And be it enacted, that in the event of any
disputed election of any parochial board, or of any mem-
ber or members of any parochial board, the persons whose
30 names are returned by the returning officer as having the
majority of votes shall be entitled to sit and act as elected
members of such board in the meantime, and until the
question regarding the validity of their election shall have

been tried and determined ; and all acts and deeds done by them in their character of members of such board or managers for the poor shall be valid and effectual ; and no defect in the qualification, election, or appointment of any person acting in the character of a member of a parochial board shall vitiate or make void any proceedings of such board in which he may have taken a part.

Penalty on Officer making False Return.

XXIX. And be it enacted, That if any returning officer be guilty of wilfully making a false return he shall be liable to a penalty of fifty pounds, to be recoverable by action in the Court of Session and payable to the party or parties aggrieved by such false return.

Meetings of Parochial Boards and Committees.

XXX. And be it enacted, That it shall be lawful for every parochial board to fix certain days and places on and at which the general meetings of the board shall be held, and to adjourn such meetings from time to time, and to such places as they shall see fit : Provided always, that every parochial board shall be bound to hold at least two general meetings in every year, one on the first Tuesday of February, or as soon thereafter as may be, and the other on the first Tuesday of August, or as soon thereafter as may be, or at such other stated times as may be approved of by the board of supervision, and at such meetings to revise and adjust the roll of paupers and their allowances ; and it shall also be lawful for every parochial board to hold special meetings as occasion may require, upon summonses to be issued by the inspector of the poor or by the chairman of the board ; and it shall be lawful for every parochial board to nominate and appoint committees to act on behalf of the whole board, and such committees in transacting the business committed to them shall exercise all the powers necessary for that purpose which belong to the parochial board.

Parochial Board to elect a Chairman annually.

XXXI. And be it enacted, That every parochial board shall annually elect one of their number to be chairman for the year ensuing, and such chairman shall preside at all meetings of the board, and shall have both an original and a casting vote in case of equality; and in the event of the absence of the chairman of the board at any meeting, the members present shall elect a chairman *pro tempore*, who shall act as chairman of the meeting, and such chairman shall have a casting as well as an original vote.

Parochial Boards to meet and make up Roll of the Poor, and appoint an Inspector of the Poor.

- 10 XXXII. And be it enacted, That each parochial board shall, on the third Tuesday of September in this present year, or on such day thereafter as may be fixed by the board of supervision, meet for the purpose of making up or causing to be made up a roll of the poor persons claim-
 15 ing and by law entitled to relief from the parish or combination, and of the amount of relief given or to be given to each of such persons, and for the purpose of appointing an inspector or inspectors of the poor in such parish or combination, and fixing the amount of remuneration to be
 20 given to every such inspector; and such meeting shall make up or cause to be made up such roll as aforesaid with the least possible delay, and shall nominate and appoint a fit and qualified person or persons to be inspector or in-
 25 spectors of the poor in such parish or combination, and shall fix the amount of the remuneration to be given to every such inspector, and shall forthwith report to the board of supervision the name and address of such inspec-
 30 tor, and the amount of the remuneration to be given to him, and shall at the same or at another meeting, to be held on a day not more than fourteen days thereafter, consider and determine as to the mode of raising the funds requisite for the relief of the poor in the parish or combination.

Parochial Boards may resolve that the Funds shall be raised by Assessment.

XXXIII. And be it enacted, That it shall be lawful for the parochial board of any parish or combination assembled at such meeting, or at any adjournment thereof, or for the parochial board of any parish or combination at any meeting of such board called for that purpose, and of which due notice shall have been given, by letter, advertisement, or otherwise, to all the persons entitled to attend, to resolve that the funds requisite for the relief of the poor persons entitled to relief from the parish or combination, including the expenses connected with the management and administration thereof, shall be raised by assessment; and if the majority of such meeting shall resolve that the funds shall be raised by assessment, such resolution shall be final, and shall be forthwith reported to the board of supervision, and it shall not be lawful to alter or depart from such resolution without the consent and authority of the board of supervision previously had and obtained.

Modes of imposing Assessment.

XXXIV. And be it enacted, That when the parochial board of any parish or combination shall have resolved to raise by assessment the funds requisite, such board shall, either at the same meeting or at an adjournment thereof, or at a meeting to be called for the purpose, resolve as to the manner in which the assessment is to be imposed; and it shall be lawful for any such board to resolve that one-half of such assessment shall be imposed upon the owners, and the other half upon the tenants or occupants of all lands and heritages within the parish or combination rateably according to the annual value of such lands and heritages,—or to resolve that one-half of such assessment shall be imposed upon the owners of all lands and heritages within the parish or combination, according to the annual value of such lands and heritages, and the other half upon

the whole inhabitants, according to their means and substance, other than lands and heritages situate in Great Britain or Ireland,—or to resolve that such assessment shall be imposed as an equal per-centage upon the annual value
 5 of all lands and heritages within the parish or combination, and upon the estimated annual income of the whole inhabitants from means and substance,* other than lands and heritages situate in Great Britain or Ireland; and
 10 when the parochial board shall have resolved on the manner in which the assessment is to be imposed, such resolution shall be forthwith reported to the board of supervision

* The phrase “means and substance” includes all personal property of whatever description, and wherever situated. In the statute 1579, c. 74, which is the foundation of the poor-law, the words used to designate the subject of assessment are “substance” and “gudes and substance,” expressions which seem to indicate property already realized. Throughout the decisions, realized estate appears to be treated as the proper subject of assessment. In the reported cases, the phrases most commonly used, as convertible with “means and substance,” are “fortunes,” “personal property,” “estimated wealth,” “fortune when realized,” “means and wealth.” In the case of *Cochran v. Manson* (11th February 1823, See p. 70, No. 90), the subject of assessment is defined in the report as “personal estate wherever situated.” And the present statute in the mode of assessment here permitted (though there are other provisions whose intention is not easily reconciled with it), might seem to refer to a stock or capital from which an annual return may be derived,—“income from means and substance.” It has, therefore, been regarded as a questionable measure to extend an assessment under the third principle sanctioned by this section, as has been done in several parishes, to prospective or precarious incomes derived from labour or skill, or to pensions and similar incomes, which *are not derived from capital or realized estate*. It is argued that, if it had been intended that all incomes, from whatever source derived, should be subject to the equal per-centage sanctioned as the third method of assessment, the clause should have stopped with the words “income of the whole inhabitants,” so as to leave out the qualifying expressions “from means and substance;” and that as the incomes to be so assessed are expressly described as incomes from one source only, the legislature has excluded from this method of assessment all incomes which arise from a different source. The question has not been tried, and may be regarded as at least a doubtful one. Eminent authorities are of opinion, that a man’s skill may be considered as comprehended in his “means,” while “substance” applies more properly to his property. The phrase is certainly obscure; and its use, without explanation, in this statute, to be regretted. See p. 25 and p. 69, No. 86.

for approval ; and if the manner of assessment so resolved upon shall be approved by the board of supervision, the same shall be adopted and acted upon in such parish or combination, and shall not be altered or departed from without the sanction of the board of supervision ; and if the board of supervision shall disapprove of the manner of assessment so resolved upon as aforesaid, the parochial board shall, upon such disapproval being intimated, forthwith meet and resolve upon another mode of imposing the assessment consistent with law, and shall report such resolution to the board of supervision ; and the manner of imposing the assessment so resolved upon shall be adopted and acted upon in such parish or combination, and shall not be altered or departed from without the sanction of the board of supervision.*

15

Assessment may be imposed according to local Act or established Usage.

XXXV. And be it enacted, That if at the date of this act an assessment for the poor shall in any parish or parishes be imposed according to the provisions of any local act, or according to any established usage, it shall be lawful for the parochial board or boards of such parish or parishes to resolve that the assessment in such parish or parishes shall be imposed according to the rule established by such local act or usage ; and such resolution, if ap-

* “ In some parishes where a direct assessment on estimated means and substance had been resolved on, it has been abandoned. In thirty-eight mixed parishes, that is, partly rural and partly urban, the assessment, according to rent or annual value, with classification, and an equitable difference of rate on the different classes of tenants and occupants, has been adopted. The feeling against the direct assessment on means and substance, and the frequently recurring investigation of men's circumstances which it involved, has been strongly manifested in some parishes in which it had been adopted, and in which it had for some time been established ; and we think it not very unlikely that the second and third modes of assessment mentioned in the act, may gradually be abandoned, and the first mode, with or without classification, adopted by all, or nearly all, the parishes in Scotland.”—(*First Annual Report of Board of Supervision*, p. 6.)

proved of by the board of supervision, shall continue to be acted upon in such parish or parishes, and shall not be altered or departed from without the sanction of the board of supervision.

Parochial Boards may classify Lands.

- 5 XXXVI. And be it enacted, That where the one-half of any assessment is imposed on the owners, and the other half on the tenants or occupants of lands and heritages, it shall be lawful for the parochial board, with the concurrence of the board of supervision, to determine and direct
10 that the lands and heritages may be distinguished into two or more separate classes, according to the purposes for which such lands are used and occupied, and to fix such rate of assessment upon the tenants or occupants of each class respectively, as to such boards may seem just and
15 equitable.

Annual Value defined.

- XXXVII. And be it enacted, That in estimating the annual value of lands and heritages, the same shall be taken to be the rent at which one year with another such lands and heritages might in their actual state be reasonably ex-
20 pected to let from year to year,* under deduction of the pro-

* The rent of a FURNISHED HOUSE cannot be taken as the measure of assessment. An estimate must be made of the rent at which the house might be expected to let without the furniture, which being personal estate, cannot be included in an assessment on "lands and heritages."

GAME, as a pertinent of land (see sect. 1), appears to be chargeable if let. A distinction appears to be made by the best authorities where it is not let.

WOODS (except coppice cut annually) do not appear to be chargeable in an assessment on lands and heritages, but the ground on which they grow may be assessed at the rent for which it might be expected to let "in its actual state."

An opinion has been expressed, that "interest on sums expended by a landlord does not, strictly speaking, form part of a tenant's rent,

bable annual average cost of the repairs, insurance, and other expenses, if any, necessary to maintain such lands and heritages in their actual state, and all rates, taxes, and public charges payable in respect of the same: Provided always, that no mine or quarry shall be assessed unless it 5 has been worked during some part of the year preceding the day on which the assessment may be ordered to be levied.

Roll of Persons liable to Assessment to be made up.

XXXVIII. And be it enacted, That when the parochial board of any parish or combination shall have resolved as 10 aforesaid to raise by assessment the funds requisite, and when the manner in which the assessment is to be imposed shall have been fixed, and the sum to be so raised for the year or half year then ensuing shall have been ascertained, such parochial board shall make up or cause to be forth- 15 with made up a book containing a roll of the persons liable in payment of such assessment, and of the sums to be levied from each of such persons, distinguishing the sums assessed in respect of ownership or occupancy, or means and substance; and the book or roll so made up shall be 20 the rule for levying the assessment for the year or half year then ensuing; and the parochial board shall appoint one or more fit and qualified persons to be collector or collectors of the assessments, and shall fix the amount of remuneration to be given to every such collector; and it 25 shall be competent to nominate and appoint the same person who is an inspector of the poor to be collector of the assessment, and to fix the amount of remuneration to be

and that such interest ought not to be calculated in estimating the annual value of lands." This may be questioned. Properly speaking, the assessors have not to deal with the actual rent or interest farther than as evidence of "annual value." But as the assessment is to be made on the annual value of the lands "in their actual state," the landlord's expenditure must always have its influence, in so far as, "from year to year," it increases the amount at which the land might be expected to let if again brought into the market.

given to such person for the performance of the additional duties of collector of the assessment.

Amount of Assessment payable by each Person to be intimated.

XXXIX. And be it enacted, That as soon as may be after such book or roll is made up as aforesaid the collector shall intimate to each person the amount of the sum to be levied from him, and the time when the same is payable.

Parochial Boards to fix annually the Amount of Assessment, and make up Roll of Rate-payers—Power to correct Errors.

XL. And be it enacted, That before the expiration of one year from the date at which the first assessment under the provisions of this act shall have been imposed as aforesaid in any parish or combination, and yearly or half-yearly thereafter, the parochial board of every such parish or combination shall fix and determine the amount of assessment for the year or half-year then next ensuing, and shall make up or cause to be made up a book containing a roll of the persons liable in payment of such assessment, and of the sums to be levied from each of such persons; and the roll so made up shall be the rule for levying the assessment for the year or half-year then next ensuing; and the collector shall forthwith intimate to each person the amount of the sum to be levied from him, and the time when the same is payable: Provided always, that it shall be lawful for the parochial board of any such parish or combination, if there shall have been found to exist any error in the sum or sums to be levied by way of assessment, or any omissions or surcharges in respect of the persons liable to pay the same, to cause such error, omission, or surcharge to be corrected at their next or any subsequent meeting after such error, omission, or surcharge shall have been discovered: Provided also, that nothing herein con-

tained shall preclude any person who considers himself aggrieved by such assessment from his remedy by law, in the like form and on the same grounds as, at the date of the passing of this act, was competent to any party who considered himself aggrieved by assessment imposed under the statutes then in force for relief of the poor, but to the extent and effect only of exempting himself from payment of any surcharge which may have been made upon him.

Power to impose additional Assessments.

XLII. And be it enacted, That if the assessment imposed for any year or half-year shall, from any unforeseen or other circumstances prove insufficient, it shall be lawful for the parochial board of such parish or combination to meet and impose such further and additional assessment as may be sufficient to raise the sum required.

Power to Parochial Boards to exempt on the Ground of Inability.

XLII. And be it enacted, That it shall be lawful for the parochial board of any parish or combination to exempt from payment of the assessment or any part thereof, to such an extent as may seem proper and reasonable, any persons or class of persons, on the ground of inability to pay.

20

Power to levy from Tenants the Assessment on Owners.

XLIII. And be it enacted, That where the one-half of any assessment is imposed on the owners, and the other half on the tenants or occupants, of lands and heritages, it shall be competent for the collector of such assessment to levy the whole thereof from the tenants or occupants, who shall be entitled to recover one-half thereof from the owners, or to retain the same out of their rents, on production of a receipt granted by the collector of such assessment.

Long Lease Holders to be considered Owners.

XLIV. And be it enacted, That in all landward as well as all burghal parishes and combinations where houses have been or shall be built by the tenant of any land held under a building lease upon such land, the tenant and his
5 heirs and assignees in such lease, shall for the purposes of this act, be deemed and taken to be the owners of such houses.

Canals and Railways how to be assessed.

XLV. And be it enacted, That in cases where any canal or railway shall pass through or be situate in more than
10 one parish or combination, the proportion of the annual value thereof, on which such assessment shall be made for each such parish or combination shall be according to the number of miles or distance which such canal or railway passes through or is situate in each parish or combination
15 in proportion to the whole length.

The same property not to be assessed in Two Parishes.

XLVI. And be it enacted, That the owners and occupiers of lands and heritages shall not be liable to be assessed in respect of such lands and heritages for the relief of the poor in more than one parish or combination.

*Companies or Individuals to be assessed in certain cases—
Means and Substance not to be assessed in more than
One Parish.*

20 XLVII. And be it enacted, That if in any parish or combination in which an assessment is imposed on means and substance any company or any individual shall occupy any lands and heritages, or shall carry on any trade or business in any premises within such parish or combination,
25 such company and the partners thereof, and such individual, shall be liable to be assessed in such parish or com-

bination on their or his means and substance derived from or relating to such occupancy, trade, or business, although none of the partners of such company, nor such individual, should be actually resident in such parish or combination ;* and such company and partners, and such individual, shall 5 not be liable to be assessed on the same means and substance in any other parish or combination ; and if any person shall be assessed in any parish or combination upon his means and substance, other than means and substance derived from or relating to the occupancy of lands and 10 heritages within such parish or combination, or the carrying on of trade or business in premises within such parish or combination, such person shall not be assessed upon the same means and substance in any other parish or combination ; and if any person shall reside in and be liable to be 15 assessed as an inhabitant of more than one parish, it shall be optional to such person to determine in which of such parishes he shall be assessed on his means and substance, other than means and substance derived from and relating to the occupancy of land and heritages, or the carrying on 20 of trade or business in premises within any particular parish.

Means and Substance under £30 not to be assessed.

XLVIII. And be it enacted, That no person shall be

* The following question arose, under this section, in the parish of Stranraer. Three Dissenting clergymen, whose churches are situated in the parish, have their residences beyond its bounds. The parochial board of Stranraer (in an assessment on means and substance), proposed to charge them on their professional income, on the ground that it was derived from churches within the parish, and that by the 49th section stipends are made liable to assessment. The clergymen admitted their liability to assessment in the parish of their residence, but questioned their liability to be assessed in the parish where their churches happen to be situated. Their income not being derived from trade or business, and their church ministrations being merely a fractional part of their duty, not occupying, perhaps, 150 hours in the whole twelvemonth, they maintained that this section of the act could not be applied to them. The question having been submitted to counsel, the board ultimately abandoned the assessment.

liable to be assessed in any parish or combination on his means and substance unless the estimated annual value thereof in whole shall exceed thirty pounds.

Stipends may be assessed.

XLIX. And be it enacted, That clergymen shall be
5 liable to be assessed for the poor in respect of their stipends.*

Certain privileges of Exemption to cease.

L. And be it enacted and delared, That the privileges of exemption from payment of assessment in the city of Edinburgh, possessed and enjoyed by members of the College of Justice and officers of the Queen's household, shall
10 not be applicable to assessments imposed and levied for the relief of the poor under the authority of this act.

Assessment not to be void from Error or Misnomer.

LI. And be it enacted, That where any assessment shall have been imposed by the parochial board of any parish or
15 combination, such assessment shall be payable at the time or times, and in the proportions, to be appointed by the parochial board; and no assessment shall be rendered void or affected by reason of any mistake or variance in the christian or surname or designation of any person charge-
20 able therewith, but all assessments shall be valid and effectual against the person intended to be charged, and *bona fide* liable in payment of the same.

* The received opinion seems to be, that in an assessment on lands and heritages payable one-half by the owner, and the other half by the occupant, a minister may be assessed both as owner and as occupant on the annual value of his manse and glebe. By section 1, the word "owner" is defined to mean the person who "shall be in the actual receipt of the rents and profits of lands and heritages."—(No. 9, Sheriff-Court Decisions, p. 225.)

Parish Property vested in new Parochial Boards.

LII. And be it enacted, That where any property whatsoever, whether heritable or moveable, or any revenues, shall, at the time of the passing of this act, belong to or be vested in the heritors and kirk-session of any parish, or the magistrates, or magistrates and town-council of any burgh, or commissioners, trustees, or other persons on behalf of the said heritors and kirk-session, or magistrates, or magistrates and town-council, under any act of parliament, or under any law or usage, or in virtue of gift, grant, bequest, or otherwise, for the use or benefit of the poor of such parish or burgh, it shall, from and after a time to be fixed by the board of supervision, be lawful for the parochial board of each such parish, or of the combination in which such parish or burgh may be respectively, to receive and administer such property and revenues, and the right thereto shall be vested in such parochial board; and the said heritors and kirk-session, magistrates, town-council, commissioners, trustees, or other persons are hereby authorised and required either to continue to hold all such property and revenues for the behoof of such parochial board, or to make, grant, subscribe, and deliver such dispositions, assignments, and conveyances of all such property and revenues as may be necessary to enable such parochial board to administer the same for behoof of the poor of such parish or combination.

Funds to be invested.

LIII. And be it enacted, That all and every sums or sum of money or other funds which have been or may hereafter be given, mortified, or bequeathed for the use of the poor, and which shall become vested in the parochial board of any parish or combination, and whereof the annual proceeds are to be applied for behoof of the poor, shall, if not specially directed to be otherwise invested, be, without delay, either lodged in a chartered bank, or placed at interest on government or heritable security, or in the stock of one

or more of the chartered banks in Edinburgh; and the board of supervision is hereby authorised and empowered to require returns to be made to them from time to time, as they shall deem expedient, as to all such money or
5 funds.

Church Collections in assessed Parishes.

LIV. And be it enacted, That in all parishes in which it has been agreed that an assessment should be levied for the relief of the poor, all monies arising from the ordinary church collections shall, from and after the date on which
10 such assessment shall have been imposed, belong to and be at the disposal of the kirk-session of each parish: Provided always, that nothing herein contained shall be held to authorise the kirk-session of any parish to apply the proceeds of such church collections to purposes other than
15 those to which the same are now in whole or in part legally applicable, or to deprive the heritors of their right to examine the accounts of the kirk-session, and to inquire into the manner in which the funds have been applied: Provided also, that the session-clerk or other officer to be ap-
20 pointed by the kirk-session shall be bound to report annually, or oftener if required, to the board of supervision, as to the application of the monies arising from church collections, and if such session-clerk or other officer shall refuse to make such report when required he shall be liable
25 to a penalty not exceeding five pounds.

Duties of Inspector of the Poor—Assistant Inspectors in populous Parishes.

LV. And be it enacted, That the inspector of the poor in each parish or division of a parish for which he may be appointed shall have the custody of and be responsible for all books, writings, accounts, and other documents what-
30 soever relating to the management or relief of the poor in such parish or division of a parish, and it shall be the duty of the said inspector to inquire into and make himself ac-

quainted with the particular circumstances of the case of each individual poor person receiving relief from the poor-funds, and to keep a register of all such persons, and of the sums paid to them, and of all persons who have applied for and been refused relief, and the grounds of refusal, and to visit and inspect personally, at least twice in the year, or oftener if required by the parochial board or board of supervision, at their places of residence, all the poor persons belonging to the parish or division of the parish in the receipt of parochial relief, provided that such poor persons be resident within five miles of any part of such parish or division of a parish, and to report to the parochial board and to the board of supervision upon all matters connected with the management of the poor, in conformity with the instructions which he may receive from the said boards respectively, and to perform such other duties as the said boards may direct: Provided always, that in populous and extensive parishes or divisions of parishes the duties of inspecting and visiting the poor may be performed by assistant inspectors or other competent persons, to be appointed and paid by the parochial board for these duties, and for whose conduct and accuracy the inspector of the poor shall be responsible to the board of supervision.

Board of Supervision may dismiss or suspend Inspectors.

LVI. And be it enacted, That if any inspector of the poor shall fail or neglect or refuse to perform the duties of his office, or shall, in the opinion of the board of supervision, be unfit or incompetent to discharge the duties of his office, then it shall and may be lawful for the said board of supervision, by a minute or order, to suspend or dismiss such inspector; and the parochial board of the parish or combination for which such person is inspector shall forthwith proceed to appoint another person to perform the duties of inspector of the poor in the room of the inspector so suspended or dismissed.

Inspectors may pursue and defend Actions.

LVII. And be it enacted, That in case it shall be necessary to commence or institute any action by or on behalf of any parish or combination, or parochial board for the relief of the poor, such action may be brought in the
5 name of any inspector of the poor of such parish or combination as pursuer; and in any action to be brought against any parochial board it shall not be necessary to call the individual members of the parochial board as defenders, but it shall be lawful for the pursuer in such action to call
10 any inspector of the poor of any such parish or combination, and such inspector shall be bound to appear and answer on behalf of the parochial board; and all summonses, notices, diligences, decree, or other proceedings served or obtained or had against any inspector of the poor shall be
15 binding on and conclusive against the parochial board of the parish or combination for which he is an inspector; and the parochial board shall have the entire direction and control of every such action, although the same may be carried on in name of the inspector.

Actions transferred.

20 LVIII. And be it enacted, That all actions brought by or against any inspector of the poor in his official character shall be continued by or against his successors in office, notwithstanding the death, resignation, suspension, or removal, of such inspector, upon notice given to such suc-
25 cessor without any action of transference.

Lunatic Paupers to be placed in Asylums—Board of Supervision may direct Removal in Certain Cases.

LIX. And be it enacted, That in every case in which any poor person who shall have become chargeable in any parish or combination shall be insane or fatuous, the parochial board of such parish or combination shall, within
30 fourteen days from the time when such person is declared

or known to be insane or fatuous, provide that such insane or fatuous person be conveyed to and lodged in an asylum or establishment legally authorised to receive lunatic patients ; and the inspectors of the poor in every parish or combination shall and are hereby required to report with-
out delay to the board of supervision all cases of insane or fatuous persons chargeable as paupers in their respective parishes ; and the said board of supervision is hereby authorised and empowered, on any parochial board refusing or neglecting to provide for the removal of an insane or fatuous poor person to an asylum or establishment as aforesaid within the time hereinbefore specified, to take such measures as may be necessary for removing such insane or fatuous poor person to a lunatic asylum or establishment ; and the whole expense of such removal and all subsequent expenses shall be recoverable from and defrayed by such parochial board : Provided always, that under special circumstances in particular cases it shall be lawful for the parochial board, with the consent of the board of supervision, to dispense with the removal of insane or fatuous poor persons to a lunatic asylum or establishment, and to provide for them in such other manner and under such regulations, as to inspection and otherwise, as shall be sanctioned by the board of supervision.

Provision as to Poorhouses.

LX. And whereas for more effectually administering to the wants of the aged and other friendless impotent poor, and also for providing for those poor persons who from weakness or facility of mind, or by reason of dissipated and improvident habits, are unable or unfit to take charge of their own affairs, it is expedient that poorhouses should be erected in populous parishes ; be it enacted, That in every case in which a parish, or combination of parishes, contains more than five thousand inhabitants, according to the enumeration of the population then last published by authority of Parliament, it shall be lawful for the parochial board of any such parish or combination to take into con-

sideration the propriety of erecting a poorhouse for such parish or combination, or of altering or enlarging any existing poorhouse; and if after full time and opportunity given for deliberate consideration, the said parochial board
5 shall be satisfied of the propriety of erecting a poorhouse, or of enlarging any existing poorhouse, and shall come to a resolution to that effect, such resolution shall be forthwith reported to the board of supervision, and if approved of by the board of supervision, the same shall be carried
10 into execution by the said parochial board.*

Parishes may unite for the purpose of building Poorhouses.

LXI. And be it enacted, That, with the concurrence of the board of supervision had and obtained thereto, it shall be lawful for the parochial boards of any two or more contiguous parishes to agree to build a common poorhouse for

* "We must judge of the propriety of refusing to relieve a pauper otherwise than by admitting him into the poorhouse, with reference to the special circumstances of each case."—"When a poor person is admitted to be destitute, and wholly disabled from contributing to his own support, no test is required; and if he reside in the house of a relative or friend, there might be great cruelty in compelling the pauper to exchange such a home for the poorhouse. In cases of partial disability, when the pauper is willing to contribute all he can towards his own support, there does not appear to be any reason why out-door relief should be denied. It is probable that the cost of maintaining him in the poorhouse would considerably exceed the amount of out-door relief that may be adequate with the aid of his own earnings, to support him."—"There are other cases which will suggest themselves to persons conversant with the management of the poor, in which there could be no advantage to the parish, to the community, or to the poor, in abolishing out-door relief, and compelling every pauper to enter the poorhouse, or to forfeit his claim to parochial aid; and, on the other hand, many cases occur in almost every parish in which it is most desirable that the parochial authorities should have it in their power not only to provide in a poorhouse for the various classes of helpless persons referred to in the statute, but also to test, by an offer of admission to the poorhouse, the destitution of parties whose disability, or the extent of whose disability, is doubtful, and believed to be pretended or exaggerated. In towns, more especially, it is desirable that there should be poorhouses for the reception both of the helpless, and those whose destitution or disability is doubtful."—*First Annual Report of Board of Supervision*, p. 14.

such two or more parishes; and the expense of maintaining and erecting such poorhouse shall be borne by such parishes in such proportions as shall be agreed on by the parochial boards of the said parishes respectively: Provided always, that if any such agreement for the purpose of building a poorhouse has once been effected, it shall not be lawful for any one or more of the parishes to withdraw from such agreement without the consent of the board of supervision previously had and obtained.

Power to borrow Money for building Poorhouses.

LXII. And be it enacted, That for the purpose of erect- 10
ing new poorhouses, and for enlarging, altering, or repair-
ing any existing poorhouse, the parochial board in any
parish or combination is hereby authorised and empowered
to borrow money; and for the more effectually securing
the repayment of the sum borrowed, with interest, it shall 15
be lawful for the said parochial board to burden or charge
the future assessments for the poor in such parish or com-
bination with the amount of the money so borrowed: Pro-
vided always, that the principal sum so borrowed shall in
no case exceed three times the amount of the assessment 20
raised for the relief of the poor during the year immediately
preceding that in which the money is borrowed; and that
any loan of money borrowed for the purposes aforesaid
shall be repaid by annual instalments of not less in any
one year than one-tenth of the sum borrowed, exclusive of 25
the payment of the interest on the same: Provided also,
that no further or other sum shall be borrowed or charge-
able on the poor-assessment for the purposes aforesaid
until the whole of the money last borrowed, with interest
on the same, shall have been paid off. 30

*Plans for Poorhouses to be approved by Board of
Supervision.*

LXIII. And be it enacted, That from and after the

passing of this act no new poorhouse shall be built, nor shall any existing poorhouse be enlarged or altered, nor shall it be lawful to impose an assessment or borrow money for such purposes, unless the plan of such new poorhouse, 5 or of such proposed enlargements or alterations, shall have been submitted to and approved by the board of supervision, and signed, subscribed, or endorsed by at least three of the members of the said board in attestation of their approval.

*Parochial Boards to frame Rules for Regulation of
Poorhouses.*

10 LXIV. And be it enacted, That in every case in which a poorhouse already exists, or shall be built or enlarged, or altered under the provisions of this act, the parochial board or boards shall frame rules and regulations for the management of such poorhouse, and for the discipline and 15 treatment of the inmates thereof, and for the admission of any known minister of the religious persuasion of any inmate of such poorhouse at all reasonable times, on the request of such inmate, for the purpose of affording religious assistance to such inmate, and shall submit such rules and 20 regulations to the board of supervision for approval ; and no rules or regulations shall be effectual, or shall be acted upon, except such as shall have been approved by the board of supervision.

*Poor Persons from other Parishes may be received into
Poorhouses.*

LXV. And be it enacted, That it shall be lawful for the 25 parochial board of any parish or combination in which a poorhouse has been or shall hereafter be erected, to receive and accommodate in such poorhouse poor persons belonging to any other parish, and to charge such rates for the maintenance of such poor persons as shall be approved by 30 the board of supervision, and such poor persons shall be

in all respects subject to the same discipline and treatment as the other inmates of the poorhouse in which they are so accommodated.

Medical Attendance in Poorhouses.

LXVI. And be it enacted, That in all cases in which poorhouses shall be erected or enlarged or altered, under the provisions of this act, there shall be proper and sufficient arrangements made for dispensing and supplying medicines to the sick poor, under such regulations as the parochial board shall make, and the board of supervision shall approve; and there shall be provided by the parochial board proper medical attendance for the inmates of every such poorhouse, and for that purpose it shall be lawful for the parochial board to nominate and appoint a properly qualified medical man who shall give regular attendance at such poorhouse, and to fix a reasonable remuneration to be paid to him by such parochial board: Provided always, that if it shall appear to the board of supervision that such medical man is unfit or incompetent or neglects his duty, it shall be lawful for the board of supervision to suspend or remove such medical man from his appointment and attendance.

Parishes may subscribe to Hospitals, &c.

LXVII. And be it enacted, that it shall be lawful for the parochial board in any parish or combination, for the benefit of the poor of such parish or combination, to contribute annually, or otherwise, such sums of money as to them may seem reasonable and expedient, from the funds raised for the relief of the poor, to any public infirmary, dispensary, or lying-in hospital, or to any lunatic asylum, or asylum for the blind or deaf and dumb.

Sums raised by Assessment applicable to the Relief of Occasional Poor.

LXVIII. And be it enacted, That from and after the passing of this act all assessments imposed and levied for the relief of the poor shall extend and be applicable to the relief of occasional as well as permanent poor: Provided
5 always, that nothing herein contained shall be held to confer a right to demand relief on able-bodied persons out of employment.*

* This section establishes the right of the industrious poor to parochial relief, when in destitution from temporary sickness or bodily injury. It seems also to establish a discretionary power in the parochial boards to extend relief to the able-bodied poor, in periods of distress. And while it provides that it shall not "be held to confer" on the able-bodied a right to *demand* such relief, its provisions seem to have been carefully framed, so as not to take away that right, if it previously existed.—Whether the able-bodied can maintain such a right under the old law, is a question which has given rise to much discussion. The only decisions of the Supreme Court are favourable to the existence of the right, and yet a general impression has arisen decidedly hostile to it. In one case (*Pollock v. Darling*, No. 1, p. 61), it was expressly recognised, and an assessment sustained, which had for its *exclusive object* to provide for the able-bodied during a dearth of provisions, simultaneously with a separate assessment for the support of the ordinary poor; and although this decision has been much questioned, the Court, in a case occurring nearly twenty years after it, while refusing to sustain the sheriff's competency to entertain an application by a number of able-bodied persons to enforce a claim to relief, so far from seizing the opportunity to repudiate the principles of its former judgment, as might have been expected, had it then deemed them erroneous, rather gave a further countenance to the right itself, by inserting in its judgment a reservation to the petitioners "to apply by a competent action to the Supreme Civil Court." (*Paisley*, No. 7, p. 52). Mr Dunlop, on the other hand, has expressed a strong opinion against the existence of the right, and entered into an historical view of the poor-laws in Scotland, to shew that the able-bodied were never contemplated by the ancient statutes as entitled, in any case, to support. His leading argument is, that, by the earlier enactments, the impotent poor alone were licensed to beg; and that, when a poor-law was introduced, this privilege was commuted for the right to parochial support; but that the right was extended to those only who had already the privilege of begging; and he supports this by a consideration of the language of the subsequent statutes. It must be remarked, however, that the earliest statute on the subject (1424, c. 42) establishes a principle sufficiently wide to include every

Medical Relief, Clothing, and Education.

LXIX. And be it enacted, That in every parish or combination it shall and may be lawful for the parochial board, and they are hereby required, out of the funds raised for the relief of the poor, to provide for medicines, medical attendance, nutritious diet, cordials, and clothing for such 5

species of helpless destitution: "That na thigger (almsgatherer) be tholled to begge, nouthor to burgh nor land, betwixt 14 and 70 yeirs, but (unless) they be seen by the Councell of the Commounes of the country *that they may not win their living utherwaies.*" The act 1579, c. 74, which introduced the poor-laws, divides the objects of its enactments into two great classes,—one to be punished, the other to be provided for. The former, the "vagabonds," it describes as "juglars," "idle people that feinzies them to have knowledge of charming and prophecie," &c., "persons being haille and starke in body, and able to work, *alleging them to have been herried or burnt,*" "and uthers nouthor havand land nor maisters, nor using any lauchful merchandice, craft, or occupation quhairby they may win their livings," "minstrelles, sangsters, and taletellers," "all commoun labourers, being personnes abill in bodie, living idle, and *fleeing labour:*" "counterfaicters of licences to beg," &c. &c., descriptions which clearly point to a life of imposture and wilful idleness. Nor, indeed, if the language of the statute had been more ambiguous, could it have been conceived as its intention that destitution arising from dearth, the want of work, or other general calamity, should be treated as the subject of punishment. Accordingly, the criterion applied by the statute for distinguishing those who were to be provided for, from those who were to be punished, is substantially the same with that which was established by the statute of 1424, "all aged, *pure*, impotent, and *decayed* persons," "*quhilkes of necessitie mon live bee almes,*"—"sik as necessairlie mon be sustained be almes." The very same criterion is repeated in the act 1661, c. 38, which provides that the Justices "shall take up a list of the poor in every paroch within burgh or land, into which number there shall no persons be received, *who are in any way able to gain their own living.*" The act 1663, c. 16, provided in express terms, that those "who being masterless and out of service, have not wherewith to maintain themselves by their own means and work," may be sent to work in manufactories, and that the parishes "who *thereby are relieved of the burden of them,*"—thus apparently recognising a pre-existing obligation in regard to them—shall pay for their maintenance therein 2s. Scots per day for the first year, and 1s. Scots daily for the next three years. And though it seems to be agreed that the special enactments of this statute have fallen into desuetude, it can scarcely be held to follow that we must disregard its principle, in a question which relates so much to the policy of its times, and the interpretation of contemporaneous laws, especially as it was revived by the latest of our Scottish statutes,

poor, in such manner and to such extent as may seem equitable and expedient; and it shall be lawful for the parochial board to make provision for the education of poor children who are themselves or whose parents are objects of parochial relief.

(1698, c. 21), on which depends the efficacy of the proclamations themselves; and it moreover appears to have introduced three cardinal points of the poor-law, viz., three years' settlements, an equal division of assessments between landlord and tenant, and the sub-distribution of the tenant's assessment according to "means and substance." Again, the act 1672, c. 18, on the narrative that, if the able-bodied poor "were set to work and bred to trades and callings, the people might not only be disburdened of them, but they might in a short time and upon far less expence become useful and profitable for the whole kingdom," provided for the erection of workhouses to receive them, and appointed contributions "to be paid by the paroches relieved of the said poor," as specified in the act 1663. In like manner, the proclamation, 11th August 1692, appoints an assessment for "all the poor within the parish," and expressly includes the able-bodied destitute, providing that, "if any of the poor of the parish are able to work," the heritors may put them to work, according to their capacities, either within the parish, or to any adjacent manufactory, "furnishing them always with meat and cloth." Mr Dunlop, indeed, acknowledges (p. 419), that the terms of this proclamation lead to the conclusion that the able-bodied poor were intended to be employed or supported by the parish, but expresses an opinion that it must be understood to have reference only to those who, in terms of the act 1579, c. 74, though unable to maintain themselves by their labour, are yet "not so diseased, lamed, or impotent, but that they may work in some manner of work." But notwithstanding the weight of Mr Dunlop's authority, concurred in, as it is, by Lord Pitmilley, in his work on the Poor-Laws (p. 29), it can scarcely be regarded as a settled point, in the face of the decisions which stand in the books, that the able-bodied are disqualified to maintain a claim to relief, when suffering severe privation from dearth or stagnation of work. The policy of the times tends rather to the recognition of their right. And the views which were maintained successfully by Lord President Blair, when at the bar, in Pollock's case, may yet be thought deserving of renewed attention. "Inability to earn subsistence is," said he, "the true and only distress which it is the object of a code of poor-laws to relieve. The causes which produce this disability, provided they be real, cannot be distinguished from each other. While it is admitted, that, by the statute law, those who labour under old age, or lasting bodily infirmities, are entitled to relief, how should this obligation of the rich to the poor be discharged, where a family is perishing for want, if this should arise, not from want of health, but from a dearth of provisions; not by a special visitation of affliction to the individual, but by a more extensive calamity, which presses

Destitute Persons to be relieved, although having no Settlement in the Parish to which they apply.

LXX. And be it enacted, That in every case in which a poor person in any parish or combination shall apply for parochial relief, the inspector of the poor or other officer of such parish or combination whose duty it shall be to attend to such applications, shall be bound to make inquiry ⁵

upon a whole class of the community? Vice may have brought on infirmity, and idleness may have created a disability to labour: still such misfortunes would be relieved; and shall not assistance be afforded to the honest and industrious man who works diligently, and yet is unable, from the circumstances of the times, to save himself and his family from want?

"That all classes of the community, who, by their utmost efforts, are unable to earn a sufficiency of subsistence, are entitled, under the system of our poor-laws, to relief from others, is a position which does not stand in need of any general reasons of expediency for its support, nor any liberal construction of the statutes: That this was the actual intention, and is the express will of the Legislature, is deduced from the words in which the statutes are framed, and by the historical circumstances of the times which called for them. The aim of our Legislature was, to substitute a public fund in all cases where alms would otherwise be necessary.

"After domestic slavery had fallen into disuse, and the lower orders were emancipated, they were immediately exposed to casual distress; and from the want of trade and manufactures, which might have absorbed an idle population, this country was infested with vagabonds of various classes. To restrain the nuisance of begging, the acts 1424, c. 25, 1503, c. 70, and 1535, c. 22, restricted the exercise of it to such as should be licensed. In these, no particular causes of poverty are specified; but the necessity itself, common to all kinds of indigence, is distinctly expressed as a sufficient title to obtain a license. After the dissolution of the religious houses, by whom the poor were chiefly supported, they were thrown altogether on voluntary charity, and brought into great distress. The state of the poor introduced the act 1579, which, with a few subsequent amendments, constitutes our code of poor-laws. Its object is to repress mendicity by a regular assessment, and, under this plan, to relieve all those who are dependent on alms. At that time, such was the wretched state of husbandry, that every unfavourable spring or summer was followed with dearth, even local scarcities were aggravated into famine. Its constant attendant was pestilence. With this distress recurring every few years, a general law for the relief of poverty could not be prepared without intending to include this case. Accordingly, the general description in 1579, is, 'quhilkes of necessity mon live bee almes,' without any enumeration of the varieties of indigence, or of the different causes by

forthwith into the circumstances of the applicant, and shall, notwithstanding such poor person may not have a settlement in the parish or combination, if he be in other respects legally entitled to parochial relief, be bound to furnish him with sufficient means of subsistence until the next meeting of the parochial board, and such board shall continue to afford to such poor person such interim maintenance as may be adjudged necessary until the parish or combination to which such poor person belongs be ascertained, and his claim upon such parish or combination admitted or otherwise determined, or until he shall be removed; and every inspector of the poor, or other officer to whom application shall be made by or on behalf of any poor person for parochial relief, shall be bound to return an answer to such application within twenty-four hours

which a dependence on alms may be produced. That it intended every species of poverty, and more especially that arising from the increased price of provisions, is clearly evinced by the proclamations of Council in the reign of William and Mary, occasioned by a dearth of provisions, which produced all the accumulated miseries of famine. They are emphatically termed 'the seven ill years;' and to relieve the miseries of the common people, the Privy Council referred to the laws as already sufficient, and recommended magistrates diligently to execute them in favour of all whose inability to live otherwise, justified the application of them in each particular case. Practice confirms this interpretation: it is the known and undisputed usage to give relief to the industrious poor, under circumstances of temporary distress, from whatever causes it may arise; they cannot earn a complete livelihood to themselves without assistance, and that assistance, under the present system, till now has never been called in question. The seasonable administration of relief, in cases of temporary indigence, often delivers those from dependence on alms, who would otherwise become at length a permanent burden on the public; so that it is advisable in point of expediency.

"Both in this country and in England, it has been found by experience, that the unavoidable disorders arising from poverty, could find no adequate cure by trusting to voluntary beneficence. A general assessment alone is calculated for a prompt, sufficient, and comprehensive relief, particularly for great and occasional distresses. The fund must be already provided, the system matured, and laws proportionate to the evil must be ready, otherwise the misery of the labouring classes of the community will run to such a height, that what has been refused in charity will be taken by force."—Pollok; M. 10591. See on the other hand, Dunlop, p. 340; Lord Pitmilley, p. 25; and Sheriff Court Decisions, No. 31, p. 261.

from the time when it was made: Provided always, that if the necessary means of support are afforded to the applicant in the meantime, such inspector or other officer may delay giving a final answer to such application for any period which to him may seem necessary for prosecuting his inquiries: Provided also, that such poor person shall be bound to give to the inspector and parochial board of the parish or combination to which he has applied for relief all information and assistance which it is in his power to give for the purpose of ascertaining the parish or combination to which he belongs, and every other matter regarding his case which the inspector may desire to ascertain, and shall be bound to answer upon oath, if required, all such questions as may be put to him before any justice of the peace or magistrate, and in case of false swearing, shall be liable to be prosecuted for perjury.

Expenses may be recovered from Parish of Settlement.

LXXI. And be it enacted, That where in any case relief shall be afforded to a poor person found destitute in a parish or combination, it shall be lawful for the parochial board of such parish or combination to recover the monies expended in behalf of such poor person from any parish or combination within Scotland to which he may ultimately be found to belong, or from his parents or other persons who may be legally bound to maintain him: Provided always, that in all cases in which relief shall be afforded by one parish or combination to a poor person having a settlement in another parish or combination, written notice of such poor person having become chargeable shall be given to the inspector of the poor of the parish or combination to which such poor person belongs; and the parish or combination affording relief shall not be entitled to recover for any charges or expenses incurred in respect of such poor person, except from and after the date of such notice.

Where Parishes do not provide for removal of their Poor from other Parishes after Notice.

LXXII. And be it enacted, That if within a reasonable time after notice, the parish or combination to which such poor person shall as aforesaid have been ascertained to belong shall not remove such poor person, or shall not make
5 provision to the satisfaction of the parish or combination which has given the notice for the constant weekly subsistence of such poor person, it shall be lawful for the parish or combination which has given the notice, to cause such poor person to be removed to the parish or combination to
10 which he belongs, at the expense of such last mentioned parish or combination, unless such poor person shall, owing to sickness or infirmity, be incapable of being removed, in which case the parish or combination in which he is shall be bound to relieve him, and shall be entitled to re-
15 cover from the parish or combination to which he belongs the amount so expended, provided that such amount does not exceed the rate expended for relief of other poor persons in the parish so relieving such poor person.

Party refused may apply to Sheriff.

LXXIII. And be it enacted, That if relief shall be re-
20 fused to any poor person who shall have made application for relief, it shall and may be lawful for such poor person to apply to the sheriff of the county in which the parish or combination from which such poor person has claimed relief, or any portion of such parish or combination, is situ-
25 ate, and the said sheriff shall forthwith, if he be of opinion that such poor person is, upon the facts stated, legally entitled to relief, make an order upon the inspector of the poor, or other officer of such parish or combination, directing him to afford relief to such poor person in the
30 meantime until such inspector or other officer shall, on or before a day to be appointed by the said sheriff, and to be intimated in the same order, give in a statement in writing, shewing the reasons why the application of such poor

person for relief was refused, which statement the said sheriff shall afterwards appoint to be answered, and shall, if required, nominate an agent to appear and answer on behalf of such poor person, and shall further, if necessary, direct a record to be made up, and a proof to be led by 5 both parties; and it shall be lawful for the sheriff, if he shall see fit, to direct the interim support to such poor person, to be continued until a final judgment shall have been pronounced on the merits of the case: Provided always, that nothing herein contained shall be construed to 10 enable the said sheriff to determine on the adequacy of the relief which may be afforded, or to interfere in respect of the amount of relief to be given in any individual case.

Proceedings when Amount of Relief considered inadequate.

LXXIV. And be it enacted, That in every case in which any poor person shall consider the relief granted him to be 15 inadequate, such poor person shall lodge or cause to be lodged a complaint with the board of supervision,* which board shall and is hereby required, without delay, to investigate the nature and grounds of the complaint; and if, upon inquiry, it shall appear that the grounds of such 20 complaint are well founded, and if the same shall not be removed, then the said board shall by a minute declare, that in the opinion of the board such poor person has a just cause of action against the parish or combination from which he claims relief, and a copy of such minute, certified 25 and signified by the secretary, shall, if required, be delivered to such poor person, and upon the production or exhibition of such minute or certified copy thereof such poor

* "After much anxious deliberation we have come to the conclusion, that the safest guide to a right estimate of what constitutes 'needful sustentation' in any parish, is to be derived from a knowledge of the earnings on which industrious labourers are able, in that parish, to maintain themselves and their families without parochial aid;" "but that it would be a fatal error to make the condition of the pauper more desirable than that of the independent labourer."—*First Annual Report of the Board of Supervision*, p. 20.

person shall forthwith, and without any further proceedings, be entitled to the benefit of the poor's roll in the Court of Session; and it shall be lawful for the board of supervision, after any action has actually been commenced
 5 by or on behalf of such poor person, to award to him such interim aliment as to the said board shall seem just, during the dependency of such action, which award the parochial board of every such parish or combination shall be bound to obey.

No Action to lie relative to Relief, unless by consent of the Board of Supervision.

- 10 LXXV. Provided always, and be it enacted, That it shall not be competent for any court of law to entertain or decide any action relative to the amount of relief granted by parochial boards, unless the board of supervision shall previously have declared that there is a just cause of action
 15 as hereinbefore provided.*

* A question has been raised, Whether a certificate by the board of supervision that there is a just cause of action, is necessary in reference to arrears of aliment which had arisen prior to the passing of the act? In the case of Isabella Gunn, which involved a question of this nature, "the board declined to interfere in respect of claims existing prior to the statute 8th and 9th Vict., c. 83." The case was brought before the Supreme Court, by advocacy of a deliverance which had been pronounced by the kirk-session prior to the passing of the act. The 75th section of the act was pleaded in bar of action. The Lord Ordinary (Cuninghame) sisted process for fourteen days, "to give the advocator an opportunity of again applying to the board of supervision for a special deliverance on her case,"—"and recommends to the said board to reconsider the advocator's case on the merits, if application shall be made to them, at their first convenience;" adding the subjoined note.

"*Note.*—It is stated on record, and is proved by the letters of the secretary of the board of supervision of 12th December 1845, produced, that the advocator preferred a complaint to that board before offering the present advocacy, but that the board declined to take any cognizance of it, on the ground that they did not think their powers applied to any claims existing prior to the 8th and 9th Vict., c. 83, being the Poor-law Amendment Act for Scotland.

"The Lord Ordinary, with great deference, has come to an opposite conclusion respecting the import and effect of the act, and conceives that such a claim as the present, and all others of the sort, fall to be

Settlement by Residence of Five Years.

LXXVI. And be it enacted, that from and after the passing of this act no person shall be held to have acquired

investigated and judged of by the board of supervision, in the first instance, before the claims are removed into this Court; that they are thus within the scope and intendment of the act, and the board is not excluded by its words.

"The enactment (§ 74) for the preliminary interposition of the board of supervision, in relation to complaints of inadequate aliment, is comprehensive and general in its terms, without any exception, express or implied. It was manifestly intended, on the one hand, to afford paupers cheap and easy access to this Court, if the board of supervision thought the aliment insufficient; and, on the other hand, to protect the heritors ultimately from ruinous expense, if the board, on investigation, found them in the right. But these considerations apply equally to all paupers about to institute actions for aliment after the board is constituted, without regard to the time *when their property merged*, or to the period *retro* when the heritors refused to give the claimant the rate of aliment she claimed.

Indeed it is obvious, that in every case of the kind, a demand for increased aliment, when not made to and depending before a *superior court prior* to the act, resolves into a complaint of a *present wrong*, viz., the *continued* refusal by heritors or the parochial board of an adequate aliment; and that alleged wrong, when about to be brought before a court of law subsequent to an act, is one of the very cases, as the Lord Ordinary conceives, which it is the statutory duty of the board of supervision to investigate.

"On these grounds, the act is entitled to the most liberal interpretation which the words admit of, to adapt it to the object and purposes for which it was plainly intended. But the Lord Ordinary cannot view the act as excluding all '*existing claims*' (which, at best, is not a very well defined term) when the act passed, from the consideration of the board of supervision. By a legitimate inference, probably *existing suits* are excluded from the review of the board, on the ground of *lis pendens* in a competent court; but it is presumed, it was meant by the statute to make all *future actions or claims*, contemplated to be commenced in a court of law, subject to the preliminary decision of the board of supervision.

"It was remarked at the bar, that the board of supervision had no control or power of *revision* given over the proceedings of *kirk-sessions*, but of parochial boards only. That, however, is a technical objection in point of form, very easily obviated. The pauper's claim, in such cases as the present, at least at the time when she took steps to complain of the allowance of the kirk-session, lay against the new *parochial board*. Hence, when she complained to the board of supervision, in December 1845, it was competent for that board either to refuse to recommend further aliment, or to make a remit to the parochial

a settlement in any parish or combination by residence therein unless such person shall have resided for five years continuously in such parish or combination, and shall have maintained himself without having recourse to common

board, recommending an increase of aliment, or an inquiry into the case; and thus her claim was capable, according to the strictest view of the powers of the board of supervision, of being brought within their cognizance.

"Should these views be confirmed by the Court, the board of supervision, holding the legal interpretation of the 74th and 75th clauses of the act as properly within the province of the Supreme Civil Court, will, of course, take this party's case under their reconsideration on the merits. Till they do so, the Lord Ordinary conceives it to be altogether incompetent for this Court (under the 75th clause of the act) to entertain this advocacy of the pauper's claim as it stood at the date of the advocacy (June 1846), as it can only come before this Court after it has been considered by the board of supervision."

In pronouncing a subsequent interlocutor, the Lord Ordinary issued a further

"*Note.*—The Lord Ordinary still entertains no doubt whatever as to the competency and duty of the board of supervision to take cognizance of all the branches of this case under the statute. In so far as the advocator sought an increase of future aliment, the review of the board of supervision was clearly indispensable by the statute; and even the advocator's claim for *arrears*, when not proposed to be enforced by process in this Court till after the *poor-law act* was passed, when the parochial boards got right to all the *arrears of poor's funds*, at whatever period imposed, or however long due, gives the board of supervision a power to judge how far a parochial board has been right or wrong in refusing to settle arrears at the rate claimed by a pauper subsequent to the commencement of the act."

The advocator accordingly presented a renewed application to the board of supervision, on considering which, with the Lord Ordinary's notes, the board pronounced the following deliverance:—

"The board having considered the said renewed claim, interlocutor, and note, is of opinion, with great deference to that expressed by Lord Cuninghame, that the 74th section of the 8th and 9th Victoria, cap. 83, which gives jurisdiction to the board of supervision 'in cases in which any poor person shall consider the relief granted to him to be inadequate,' relates solely to questions arising in regard to the adequacy or inadequacy of *current relief*; and that it is not competent for the board of supervision to consider the demand made by the present applicant of inlying expenses and arrears of aliment for the maintenance of a bastard child before the passing of the Poor-Law Amendment Act, inasmuch as a claim for inlying charges and such arrears does not relate to *current relief*, but is a claim for past due debt, which may involve matters of accounting, or legal defences, which this board has no power to entertain. The board was farther of opinion, that the construction

begging, either by himself or his family, and without having received or applied for parochial relief; and no person who shall have acquired a settlement by residence in any parish or combination, shall be held to have retained such

of the 75th section depends upon that put upon the 74th; and that to enable courts of law to entertain and decide actions which do not relate to the amount of current relief, but to inlying charges and arrears of aliment, it is not necessary that there should be a previous minute of the board of supervision, declaring that the party has a just cause of action."

The board, in accordance with these views, declined to make any order upon Isabella Gunn's demand for *inlying expenses and arrears*.

The Lord Ordinary thereupon reported the case to the Court, with the following note:—

"The present is represented as a case of some importance relative to the working and effect of the poor-law act recently passed; and it is necessary to report it to the Court.

"Isabella Gunn, the advocator, states herself as a female pauper, who was delivered in her father's house, in the parish of St Guthbert's, of a male child on 1st January 1844.

"The father of the child is admitted to have been Angus M'Donald, a drover, residing in North St David Street, Edinburgh. Against this party the advocator got a decree for payment of L.2, 2s. of inlying expenses, L.3 of aliment before and after her delivery, and L.6 per annum during the infancy of the child.

"No diligence was ever done on this decree, but the advocator offers to assign it to the parochial board or their inspector.

"The advocator applied to the kirk-session in February 1845, for payment of the allowances which M'Donald had refused; but the kirk-session, by a deliverance on 8th March 1845, on the grounds set forth by them, refused her application as made, but at the same time they left it optional for the said Isabella Gunn, either to keep the child herself, and continue to receive the present out-door allowance (4s. per month), or to surrender the child to be nursed at the expense of the parish.

"That deliverance was pronounced before the poor-law act was in operation; but the advocator took no step prior to the statute to bring the judgment under review of the Court. The new act, however, having been passed on 4th August 1845, the advocator presented an application to the board of supervision in December 1845, some months after they had been in office, requesting them to consider her case, and to give her the necessary certificate required by the statute (§ 75), that she had a *just cause* of action against the new parochial board. To that application the secretary of the board of supervision returned an answer, stating 'that the board cannot receive the petitions, as they are not in the form prescribed by the rules of the board, and that the board declined to interfere in respect of claims existing prior to the statute 8th and 9th Victoria, c. 83.'

settlement if, during any subsequent period of five years, he shall not have resided in such parish or combination continuously for at least one year: Provided always, that nothing herein contained shall be held to affect those persons 5 who, previous to the passing of this act, shall have ac-

"The advocator was thus obliged to bring her case into Court by advocacy, in June 1846, without any report or certificate from the board of supervision; in consequence of which the respondent, the objector, immediately *objected* to the action; and as it was stated that they would be involved in much litigation with parties having similar claims to the advocator's, they anxiously controverted the grounds on which the board of supervision had declined all inquiry into the pursuer's case. The Lord Ordinary must own that it appeared to him from the first, on grounds to be immediately explained, that the board of supervision had taken an erroneous view of their powers and duties in the case, and, therefore, he recommended the pursuer to make another application to the board, in terms which shall be immediately referred to.

"In the meantime, the subject in dispute was, to a certain extent, *varied* by an incident which occurred since the case came into Court. In December 1846, the inspector offered to receive the advocator and her child into the *poorhouse*, and to give them sustenance there, if she continued dissatisfied with the allowance paid by the inspector. Upon this, the Lord Ordinary, by interlocutor dated 15th January 1847, recommended the pursuer to make a fresh application to the board of supervision for their certificate, dividing her claims into branches, which might be separately considered when the case returned to Court.

"The advocator accordingly applied to the board of supervision; but, while they certified that there was no ground of complaint at the advocator's instance, as to the offer to maintain the pursuer and her child in the poorhouse, they still found that they had no cognisance of the pursuer's claim for *inlying charges* and *arrears of aliment*, and so declined to make any declaration on these points in terms of the statute.

"The parochial board and their inspector were thus relieved from any claim for the *future* aliment of the child; but the pursuer intimated her intention to proceed with her claim for *aliment* during her *inlying*, and for an *increased* aliment to the child between the date of her delivery in January 1844, and the offer to remove the child to the poorhouse in December 1846. As that claim, if sustained, could only be satisfied out of the funds of the parochial board, the Lord Ordinary still thinks the action could not be entertained without a previous declaration from the board of supervision, that there is a *just cause of action*; and this seems the more plain, when it is considered that one-half of the *arrears* have been run up *since the poor-law act passed in August 1845*.

"The board of supervision having declined to give effect to the recommendation of the Lord Ordinary, and continued to act on their own

quired a settlement by virtue of a residence of three years, and shall have become proper objects of parochial relief.

Removal of English and Irish Paupers.

LXXVII. And be it enacted, That if any poor person born in England, Ireland, or the Isle of Man, and not, hav- 6

view of the statute, he has no mode of extricating the case, but to report the whole proceedings to the Court.

"The Poor-Law Amendment Act has the following clauses on which the present question turns:—By sec. 74, it is provided, That in every case in which any poor person shall consider the relief granted to him to be inadequate, such poor person shall lodge, or cause to be lodged, a complaint with the board of supervision, which board shall, and is hereby required without delay to investigate, the nature and grounds of the complaint, and if, upon inquiry, it shall appear that the grounds of such complaint are well founded, and if the same shall not be removed, then the said board shall, by a minute, declare that, in the opinion of the board, such poor person *has a just cause of action* against the parish or combination from which he claims relief, and a copy of such minute, certified and signified by the secretary, shall, if required, be delivered to such poor person, and upon the production or exhibition of such minute, or certified copy thereof, such poor person shall forthwith, and without any further proceedings, be entitled to the *benefit of the poor's roll in the Court of Session*; and it shall be lawful for the board of supervision, after any action has actually been commenced by or on behalf of such poor person, to award to him such interim alimment as to the said board shall seem just, during the dependency of such action, which award the parochial board of every such parish or combination shall be bound to obey. And by sec. 75, it is enacted, That it shall not be competent for any court of law to *entertain or decide any action relative to the amount of relief* granted by parochial boards, unless the board of supervision shall previously have declared that there is a just cause of action, as hereinbefore provided.

"Now the board of supervision so construe these clauses, as to hold that they apply only to cases where *current* relief is complained of as inadequate; and on the assumption that the present is not, and was not, a claim of that description when first brought before the board of supervision, they declined to take any cognizance of it. But it occurs to the Lord Ordinary, that the board are mistaken both in their construction of the statute in the abstract, and in their application of their view of it to the present case.

"The following considerations, which it is thought have not been sufficiently attended to by the board of supervision, deserve particular attention.

"1st, It is a total mistake to suppose that the present was, even at the date of the pursuer's first application to the board of supervision

ing acquired a settlement in any parish or combination in Scotland, shall be in the course of receiving parochial relief in any parish or combination in Scotland, then and in such case it shall be lawful for the sheriff or any two justices of the peace of the county in which such parish or

in June 1846, a case merely of *arrears*. It was a claim on the parochial board by a mother, not merely for past aliment of her bastard (besides inlying charges), but for *current* and *future* aliment, till the child should arrive at ten years complete. The parochial board gave her 4s. per month, the woman asks 10s. per month; and so far it is a pure question as to the adequacy of *current* aliment, including, when the action came into Court in June 1846, nearly ten months of aliment after the act was passed, and aliment for a long tract of *future* years. This seems clearly to be as fit for the cognizance of the board of supervision as any question that can come before them.

"2d, There is, doubtless, involved in the pursuer's claim a demand for the *arrears* of aliment for a few months before the act was passed. But even if the act excluded such a case, the claim for arrears should not prevent the board of supervision from inquiring into and reporting on the *current* and *prospective* aliment claimed by the mother for the child, as to which this Court cannot entertain the case without the preliminary report of the board.

"Nay, another serious inconvenience would follow from the rigid and narrow construction of the board on their own powers. By the 74th clause of the act before quoted, the board of supervision are entitled to *raise* the aliment of a pauper during the *currency* of a *suit*, when they think the allowance inadequate. Here the aliment of a child was alleged by the claimant to be insufficient; but the board of supervision declined to look at it, because, it was said, no *cause of action* arose, *i. e.*, because the child was *born before the poor-law act was passed*. This view of the law, though twice promulgated, could not have been maturely considered by the learned board of supervision. They could never intend that an infant two years of age should be exposed to want, because it happened to be born a few months before the board was constituted.

"3d, Even as to the claim for *arrears* of aliment, the Lord Ordinary does not think that the board of supervision are entitled to put a narrow and rigid construction on their powers to preclude themselves from taking cognizance of such cases as the present. The words of the statute do not require or warrant such an interpretation. On the contrary, the whole scope and provisions of the act are against their declinature. Thus, from the day the act took effect, all the property, funds, and effects previously belonging to the heritors or kirk-session, for behoof of the poor, became vested (by sec. 52) in the parochial board,—a provision enforced by the First Division in the late case of *Meek v. The Monkland Canal Company*, where the inspector, under the statute, was found entitled to collect the arrears of assessment unpaid

any portion thereof is situate, and they are hereby authorised and required upon complaint made by the inspector of the poor, or other officer appointed by the parochial board of such parish or combination, that such poor person has become chargeable to such parish or combination 5

for three years prior to the act. See *Scottish Jurist*, 14th November 1846. The parochial boards, again, are subject to the constant superintendence and control of the board of supervision. It would, therefore, be seriously inconvenient and disadvantageous to the working of the new system, if any *pauper* could involve a parochial board in a litigation either for current or recently *bygone* aliment, before this Court, so as to put the funds to hazard vested in them by statute for charitable purposes, without the approval of the board of supervision, it is thought that the legislature meant this and all cases of the kind to fall within the cognizance of the board of supervision before the action is entertained in this Court.

“In the great majority of instances, indeed, a claim for *arrears* follows inseparably from a demand founded on the alleged inadequacy of the current aliment. Arrears must always accumulate to a greater or less extent during the discussion as to the adequacy of current aliment. If that shall be increased, it must generally follow that a pauper, or those who have alimented him, must be entitled to *bygone* aliment at the same rate. But what is that but arrears?

“In the present instance, the board seems to have thought that one part of the pursuer's claim was peculiarly incompetent or unsuitable for their cognizance, in so far as the woman claimed *inlying charges* from the parochial board, as well as *relief* of the whole aliment decreed for against her paramour. But these demands, however unusual, are *alimentary*; they are made by a party calling herself a *pauper*, who, she says, should have been *alimented* at the time by the parish, and they are now insisted in against the *funds* of the *parochial board*. These being undeniable characteristics of the pursuer's claims, the board of supervision, it is thought, must investigate and report upon them, as matters peculiarly devolved upon them by statute.

“The Lord Ordinary is not aware that any very difficult or embarrassing inquiry is thus laid on the board. The claim is that of a woman who seeks aliment, besides *in-lying charges*, for herself, incurred at the birth of a child of which she was delivered two years before she applied to the board of supervision. Such a claim might probably be favourably viewed, if a woman was taken in labour on the road-side, and received shelter and maintenance from a *stranger pauper*. But the case is different when the female makes a claim against a parochial board as the *guarantee* of the *paramour*, and claims the expenses incurred by her on *lying-in*, a year before, in the house of *her father*, who seems to be a person in respectable employment for a person in his station. The justice and propriety of that claim can be ascertained by the board of supervision, by the shortest inquiry into the

by himself or his family, to cause such person to be brought before them, and to examine such person or any witness, on oath, touching the place of the birth or last legal settlement of such person, and to take such other
 5 evidence or other measures as may by them be deemed necessary for ascertaining whether he has gained any settlement in Scotland; and if it shall be found by such sheriff or justices that the person so brought before them was born either in England or Ireland or the Isle of Man, and
 10 has not gained any settlement in Scotland, and has actually become chargeable to the complaining parish or combination by himself or his family, then such sheriff or justices

circumstances of father and daughter, which the experience of the board, and the machinery of the establishment, easily afford.

“Such an inquiry would not have been difficult to the lawyers and writers for the poor, who reported on the *probabilis causa litigandi* of paupers in their claims under the old system. But the board of supervision now *supersedes the lawyers for the poor*, and is composed of members of more experience and weight; and, therefore, the duty of preliminary inquiry and determination as to the justice of all claims for pauper aliment, is devolved on this board, whose powers and duties deserve the most liberal construction, in order to effectuate the objects of the statute.

“The Lord Ordinary endeavoured to explain briefly his views on the preceding points to the board of supervision, in his note of 15th January last; and as the previous interlocutor is not reclaimed against, it might have been expected that the board would have acted on the recommendation of the Judge, seeing that the due construction of this and other statutes is a matter peculiarly within the province of this Court. But the board of supervision having apparently thought the direction of a single Judge as not imperative on them, declined to give any deliverance on a large portion of the claims of the pursuer for increased aliment, and allowances for her child. In this unusual predicament, he is obliged to report the case to the Court, whose direction will probably be implicitly adopted by the board. Perhaps the right course now to be taken will be to make a remit to the board of supervision, with instructions to examine the pursuer's claims on the merits, and to report thereon, in terms of the statute.”

The court pronounced the following interlocutor, 6th March 1847:—“In respect that the present advocacy is brought from a deliverance of the *heritors and kirk-session*, which does not require the interposition of the board of supervision,—Find the same competent, and remit to the Lord Ordinary to proceed accordingly: Find the advocate entitled to the expenses occasioned by the discussion on the question of competency,” &c. See p. 269.

shall and they are hereby empowered, by an order of removal under their hands, which order may be drawn up in the form of the Schedule (A.) hereunto annexed, to cause such poor person, his wife, and such of his children as may not have gained a settlement in Scotland, to be removed by sea or land, by and at the expense of the complaining parish, to England or Ireland or the Isle of Man respectively, according as such poor person shall belong to England, Ireland, or the Isle of Man: Provided always, that no person shall be so removed until there has been obtained a certificate, on soul and conscience, by a regular medical practitioner, setting forth that the health of such person, his wife and children as aforesaid, is such as to admit of such removal: Provided also, that nothing herein contained shall prevent any parochial board or their inspector from making arrangements for the due and proper removal of such poor persons either by land or water, provided the arrangement be made with the consent of such poor persons themselves.

Removing Officer to have Powers of a Constable.

LXXVIII. And be it enacted, That every officer, constable, or other person to whom any such order of removal shall be delivered, for the purpose of being carried into execution, shall and may by virtue thereof detain and hold in safe custody every poor person mentioned in any such order until such poor person shall have arrived at the place to which he is ordered to be removed, and shall and may for that purpose, in every county and place through which he shall pass in the due execution of such order, have and exercise the powers with which a constable is by law invested, notwithstanding such person may not otherwise be empowered to act as a constable for the county or place respectively through which he may have occasion to pass in carrying such order into execution, and although such order may not have been granted or backed by any judge or magistrate of such county or place.

Persons again becoming chargeable to be punished—1579, c. 74.

- LXXIX. And be it enacted, That if any person who has been removed to England or Ireland or the Isle of Man from any parish or combination in Scotland, under any order of removal, shall afterwards return to Scotland and
5 apply for relief, or again become chargeable by himself or his family to the same parish or combination without having obtained a settlement therein, such person shall be deemed to be a vagabond under the provisions of an act of the Scottish Parliament passed in the year one thousand
10 five hundred and seventy-nine, intituled *An Act for punishment of strang and idle beggars, and Reliefe of the pure and impotent*, and may be apprehended and prosecuted criminally before the sheriff of the county in which such parish or any portion thereof is situate, at the instance of
15 the inspector of the poor of the parish to which he shall have so applied for relief or become chargeable, and shall upon conviction be punishable by imprisonment, with or without hard labour, for such a period as the said sheriff shall think proper, not exceeding two months.

Punishment for Desertion of Wives, and refusal to maintain illegitimate children—1579, c. 74.

- 20 LXXX. And be it enacted, That every husband or father who shall desert or neglect to maintain his wife or children, being able so to do, and every mother and every putative father of an illegitimate child, after the paternity has been admitted or otherwise established, who shall re-
25 fuse or neglect to maintain such child, being able so to do, whereby such wife or children or child shall become chargeable to any parish or combination, shall be deemed to be a vagabond under the provisions of the aforesaid act of the Scottish Parliament passed in the year one thousand five
30 hundred and seventy-nine, and may be prosecuted criminally before the sheriff of the county in which such parish or combination or any portion thereof is situate, at the

instance of the inspector of the poor of such parish or combination, and shall upon conviction be punishable by fine or imprisonment, with or without hard labour, at the discretion of the said sheriff.

Penalties how to be recovered.

LXXXI. And be it enacted, That every penalty or forfeiture imposed by this act, the recovery of which is not otherwise provided for, may be recovered by summary proceeding upon complaint in writing made in the name of the secretary to the board of supervision, or of any agent to be appointed by a minute of the said board, to the sheriff of the county in which the offence shall have been committed, or to the sheriff of any county in which the offender may be found; and on such complaint being made such sheriff shall issue a warrant for bringing the party complained against before him, or shall issue an order requiring the party complained against to appear on a day and at a time and place to be named in such order; and every such order shall be served on the party offending, either in person or by leaving with some inmate at his usual place of abode a copy of such order, and of the complaint whereupon the same has proceeded; and either upon the appearance or upon the default to appear of the party offending it shall be lawful for the sheriff to proceed to the hearing of the complaint, and upon proof of the offence, either by the confession of the party complained against or other legal evidence, and without any written pleadings or record of evidence, to convict the offender, and upon such conviction to decern and adjudge the offender to pay the penalty or forfeiture incurred, as well as such expenses as the sheriff shall think fit, and to grant warrant for imprisoning the offender until such penalty or forfeiture and expenses shall be paid: Provided always, that such warrant shall specify the amount of such penalty or forfeiture and expenses, and shall also specify a period at the expiration of which the party shall be discharged, notwithstanding

such penalty or forfeiture or expenses shall not have been paid, and shall in no case exceed three calendar months.

Application of Penalties—To be prosecuted for within Six Months.

LXXXII. And be it enacted, That the sheriff by whom any penalty or forfeiture shall be imposed by virtue of this
5 act, the application whereof is not herein otherwise provided for, shall award such penalty or forfeiture to the poor of the parish or combination in which the offence shall have been committed, and shall order the same to be paid over to the inspector of the poor or other officer for that
10 purpose; provided that no person shall be liable to the payment of any penalty or forfeiture imposed by virtue of this act unless such penalty or forfeiture shall have been prosecuted for within six months after the commission of the offence for which it has been incurred.

Rate-payers competent Witnesses.

15 LXXXIII. And be it enacted, That no inhabitant or other person liable to be assessed for the relief of the poor in any parish shall be deemed an incompetent witness in any proceeding for the recovery of any penalty or forfeiture inflicted or imposed for any offence against this act, notwith-
20 standing such penalty, when recovered, shall be applicable as aforesaid.

Penalty on Witnesses making default.

LXXXIV. And be it enacted, That if any person who shall be summoned as a witness to give evidence before any sheriff in any matter in which such sheriff shall have
25 jurisdiction under the provisions of this act, shall, without reasonable excuse, refuse or neglect to appear at the time and place appointed for that purpose, or appearing shall refuse to be examined upon oath, or to give evidence before

such sheriff, every such person shall forfeit a sum not exceeding five pounds for every such offence, over and above any other punishment to which such person may by law be liable for every such refusal.

Informalities.

LXXXV. And be it enacted, That no proceeding for the 5 recovery of penalties or forfeitures in pursuance of this act shall be set aside for want of form, or on the ground of no record having been made, nor shall the same be removed by suspension, advocacy, appeal, or otherwise into or be in any manner subject to review or reduction by any 10 superior court.

Limitation of Actions—Tenders of Amends.

LXXXVI. And be it enacted, That all actions on account of any thing done in the execution of this act shall be brought before the sheriff court, and every such action shall be commenced within three calendar months after the 15 fact committed, and notice in writing of such action, and of the cause thereof, shall be given to the defender one calendar month at least before the commencement of the action; and no pursuer shall recover in any action for irregularity or wrongful proceedings if tender of sufficient amends shall 20 be made by or on behalf of the party who shall have committed or caused to be committed any such irregularity or wrongful proceedings before such action shall have been brought, or if during the dependence of such action a tender shall be made of sufficient amends, and of all charges 25 and expenses which the pursuer may already at the time of such tender being made have incurred in prosecuting such action.

Provision for Refusal or Neglect of Parochial Boards.

LXXXVII. And be it enacted, That in case any parochial board shall refuse or neglect to do what is herein or 30

otherwise by law required of them, or in case any obstruction shall arise in the execution of this act, it shall be lawful for the said board of supervision to apply by summary petition to the Court of Session, or, during the vacation of the said Court, to the Lord Ordinary on the Bills, which Court and Lord Ordinary are hereby authorised and directed in such case to do therein as to such Court or Lord Ordinary shall seem just and necessary.

Assessments for the Poor may be recovered summarily as Land and Assessed Taxes.

LXXXVIII. And be it enacted, That the whole powers and right of issuing summary warrants and proceedings, and all remedies and provisions enacted for collecting, levying, and recovering the land and assessed taxes, or either of them, and other public taxes, shall be held to be applicable to assessments imposed for the relief of the poor; and the sheriffs, magistrates, justices of the peace, and other judges, may grant the like warrants for the recovery of all such assessments in the same form and under the same penalties as is provided in regard to such land and assessed taxes and other public taxes: Provided always, that it shall nevertheless be competent to prosecute for and recover such assessments by action in the Sheriff's Small-Debt Court; and all assessments for the relief of the poor shall, in case of bankruptcy or insolvency, be paid out of the first proceeds of the estate, and shall be preferable to all other debts of a private nature due by the parties assessed.

Parochial Board may borrow Money on Security of Assessment remaining due.

LXXXIX. And be it enacted, That if the parochial board of any parish or combination shall find it necessary in any year or half year to make disbursements for the relief of the poor beyond the amount received of the assessment applicable to the expenditure of such year or

half year, it shall be competent for such board to borrow money on the security of such part of the assessment as is still due and unreceived, but not to an amount greater than one half of such part of such assessment; and when any money has been so borrowed as aforesaid on the security of assessments, it shall not be competent to borrow on the security of any future assessment until the money borrowed as aforesaid shall have been paid off. 5

Notices how to be given.

XC. And be it enacted, That in all cases in which by the provision of this act notice or intimation is required to be given without prescribing the particular form of the notice, or the manner in which the same is to be given, it shall be lawful for the board of supervision from time to time to fix the form of such notice or intimation, and the manner in which the same is to be given. 15

Former Acts repealed which are at variance with this Act.
—7th & 8th Vict. c. 6.

XCI. And be it enacted, That all laws, statutes, and usages shall be and the same are hereby repealed, in so far as they are at variance or inconsistent with the provisions of this act; Provided always, that the same shall continue in force in all other respects: Provided also, that nothing herein contained shall be held to affect or repeal an act passed in the seventh year of her present Majesty, intituled *An Act for the Liquidation of the Debt owing by the Charity Workhouse of the city of Edinburgh*, in so far as such act relates to that debt, and the powers thereby conferred for paying off the same. 25

Alteration of Act.

XCII. And be it enacted, That this act may be amended or repealed by any act to be passed during the present session of parliament.

SCHEDULE TO WHICH THE FOREGOING ACT
REFERS.

SCHEDULE (A.)

Order for Removal to England, &c.

I, *A. B.*, the Sheriff [*or We, C. D. and E. F.*, Two of
the Justices of the Peace,] of the County of do
hereby order and adjudge *G. H.*, who has become and is
now actually chargeable to the Parish of to be
5 removed with *J. H.* his Wife and *K. L. M.* his Children,
and conveyed to England, &c., in pursuance of the Provi-
sions of an Act made and passed in the Eighth and Ninth
Years of the Reign of Queen Victoria, intituled [*Title of*
this Act.]

(Signed) _____

ANNO DECIMO ET UNDECIMO VICTORIÆ
REGINÆ,

CAP. XXXIII.

An Act to amend the Laws relating to the Removal
of Poor Persons from *England* and *Scotland*.

[21st June 1847.]

Sect. 1 Recites 8 and 9 Vict., c. 83.

*Inspectors of the Poor in Scotland to take Persons remove-
able therefrom before Sheriff or Two Justices, without
previous Complaint, &c.*

II. Be it enacted, That it shall be lawful for any in-
specter of the poor, or other officer appointed by the paro-
chial board of any parish or combination in *Scotland*, to
take and convey before the sheriff or any two justices of
the peace of the county in which the parish or combina-
tion for which such inspector or officer acts, or any por-
tion thereof is situated, without previous complaint or
warrant in that behalf, every poor person who shall be in
the course of receiving parochial relief in any parish or
combination in *Scotland*, and who he may have reason to
believe is liable to be removed from *Scotland* under the
secondly-recited act; and the sheriff or justices before
whom any such person shall be so brought shall make
such examination, and proceed in the same manner in all
respects as if such person had been brought before him or
them under and in the manner directed by that act.

Persons taking Paupers before Justices to have Powers of Constables.

III. And be it enacted, That every person who by this act is authorised to take and convey any poor person before any sheriff or justices shall, in the execution of this act, in that behalf have and exercise all the rights, privileges, powers, and immunities with which a constable is
5 by law invested.

Interpretation of Act.

IV. And be it enacted, That in the construction of this act the singular number or masculine gender shall, except when the context excludes such construction, be under-
10 stood to include and shall be applied to several persons, matters, or things, as well as to one person, matter, or thing, and to females as well as males respectively; and that the words "justices of the peace" shall be understood to include and extend to a justice of the peace or magis-
15 trate of a county, county of a city, or county of a town, or of any city or town corporate.

Act may be amended, &c.

V. And be it enacted, That this act may be amended or repealed by any act to be passed in this session of parliament.

ACT OF SEDERUNT FOR REGULATING PROCEDURE BEFORE THE SHERIFF COURTS, IN APPLICATIONS UNDER THE STATUTE 8TH AND 9TH VICT., c. 83, § 73.

Edinburgh, 12th February 1846.—Whereas it is proper that proceedings before sheriffs under the statute 8th and 9th Vict., cap. 83, intituled “An Act for the Amendment of the Laws relating to the Relief of the Poor in Scotland,” should be summary and uniform,— 5

The LORDS of COUNCIL and SESSION do hereby ENACT and DECLARE—

1. That where relief has been refused, by any parish or combination, to any poor person who shall have made application for relief, such poor person may apply to the sheriff of the county, without the intervention of an agent, and either verbally or in writing. 10

2. That the sheriff shall forthwith proceed to consider the facts stated by such poor person; and if he be of opinion, upon the facts so stated, that such poor person is not legally entitled to relief, he shall at once pronounce a deliverance to that effect. 15

3. That if, on the contrary, the said sheriff shall be of opinion, upon the facts so stated, that such poor person is legally entitled to relief, then he shall forthwith make an order upon the inspector of the poor, or other officer of the parish or combination, directing him to afford relief to such poor person in the mean time, until such inspector or other officer shall, on or before a day to be appointed by the sheriff in the same order, and to be intimated, lodge with the sheriff-clerk a statement, in writing, shewing the reasons why the application of such poor person for relief was refused. 25

4. That it shall be sufficient intimation of such order to the said inspector or other officer, that a certified copy thereof be transmitted to him through the post-office, marked on the back with the words, “Sheriff’s Office— 30

Poor-Law Intimation—Immediate.” And it shall be the duty of the sheriff-clerk to make such intimation. And the sheriff-clerk shall preserve the principal order by the sheriff, and likewise enter in the minute-book of court the
5 date of transmitting the copy thereof as aforesaid.

5. That if, after such intimation, the inspector, or other said officer, shall not, within the time appointed by the sheriff, lodge a statement, in writing, in terms of the sheriff's order, the sheriff shall forthwith, upon a certificate by
10 the sheriff-clerk that a copy of such order was duly transmitted as aforesaid, pronounce a deliverance or judgment, definitively finding such poor person to be legally entitled to relief, and ordaining the parish or combination instantly to proceed and determine the question of amount.

15 6. That where, on the other hand, the inspector, or other said officer, shall duly lodge his statement, in writing, in terms of the sheriff's order, the sheriff shall appoint the same to be answered; and he shall, if required, nominate an agent to appear and answer on behalf of such poor per-
20 son; and shall further, if necessary, direct a record to be made up, and a proof to be led, by both parties; after which he shall proceed to pronounce judgment in the cause, finding substantively such poor person to be legally either *en-
titled or not entitled* to relief; and, in the former case, or-
25 daining the parish or combination, as before, instantly to proceed and determine the question of amount.

7. That so long as the cause shall be in dependence before the sheriff, and after the said inspector, or other officer, shall have given in his statement, in writing, as aforesaid, it
30 shall be lawful for the sheriff to resume, at any time, the question of interim support; and (if he shall see fit) to direct such interim support to be continued until a final judgment shall have been pronounced on the merits of the case; and it shall, on the other hand, be lawful for the sheriff
35 (if he see fit), after the said inspector, or other officer, shall have given in his statement, in writing, to direct such interim support to be at any time discontinued,—as well as thereafter, at any time, to ordain the same to be of new afforded, as he may see cause.

8. Finally, that the said causes, so far as such poor person applying to the sheriff is concerned, shall, in all respects, be conducted on the same footing,—in regard to payment, in the first instance, of any dues of court, or other fees,—as if such poor person had been admitted to the benefit of the poor's roll; that is to say, such poor person shall not, in the first instance, be liable in payment either of any dues of court, or of any dues to the clerk or officers of court, or of fees to any agent who may have been appointed to act in his behalf, as aforesaid, except to the extent of actual outlay; but in the event of such poor person being ultimately found entitled to expenses of process, it shall be competent to such poor person to include and charge in his account of said expenses, as against the parish or combination, all ordinary fees of court, including clerk's dues and dues of extract, as well as fees, at the usual rate of charge, to his agent, and any officers of court, in like manner as if he had been an ordinary litigant; and, on the said expenses being recovered, the amount thereof shall be accounted for by such poor person, or his agent, to the several parties interested. And, further, in the event of such poor person being ultimately subjected, by the sheriff's judgment, in expenses to the parish or combination, the expenses so awarded shall be held to include all the usual fees and dues, payable, and which have been paid, by the said parish or combination in the character of an ordinary litigant.

And the Lords APPOINT this act to be inserted in the books of sederunt, and to be printed and published in common form.

D. BOYLE, *I.P.D.* 30

REGULATIONS ADOPTED BY THE SHERIFFS, REGARDING
PROSECUTIONS UNDER SECTIONS 79TH AND 80TH OF NEW
POOR-LAW ACT.

The attention of the SHERIFFS, at a meeting held in Edinburgh this day, having been called to the provisions of the 79th and 80th sections of the Poor-Law Amend-

ment Act, and to the form proper to be adopted in prosecutions under these sections: They are of opinion,—

1. That the most convenient form of prosecution, where the conclusion of the libel is restricted to imprisonment not exceeding *sixty days*, or a fine not exceeding L.10, appears to be that prescribed for the trial of offenders summarily under the statute 9th Geo. IV., c. 29.—Schedule C, annexed to that act, prescribes the form of libel at the instance of a private party, with concurrence of the Procurator-Fiscal; and though, by the Poor-Law Amendment Act, the inspector is made prosecutor, the prosecution, being described as a criminal one, should be with concurrence of the Procurator-Fiscal.

2. The Poor-Law Amendment Act declares imprisonment, with or without hard labour, for such period as the sheriff shall think proper, not exceeding *two months*, to be the punishment of the offence mentioned in § 79; and fine or imprisonment, with or without hard labour, *at the discretion of the sheriff*, to be the punishment for the offence mentioned in § 80. But if the summary form above referred to be adopted in either case, of course the conclusion of the complaint must be limited to a fine not exceeding L.10, or imprisonment not exceeding *sixty days*.

(N.B.—Two calendar months may exceed sixty days; and, therefore, the libel for any offence under either of the sections, should be limited to sixty days, when imprisonment is concluded for. On the other hand, two calendar months may be less than sixty days, if the month of *February* is included (not being leap year), and this must be attended to in prosecutions under § 79).

3. If the conclusion of the libel under section 80 be for such fine, or such period or imprisonment as the sheriff may think proper, the form of procedure under act 9th Geo. IV. will not be applicable, and the proof will require to be taken down at length, and authenticated.

4. As prosecutor the inspector must be personally present at every step of the procedure under the complaint at his instance.

5. A party accused under section 80, as well as under section 79, may be apprehended with a view to precognition and trial, and committed,—the inspector being complainer, with concurrence of the procurator-fiscal.

Edinburgh, 18th Dec. 1845.

JOHN CAY, *Convener.*

5

FORM OF LIBEL IN CASES TO BE TRIED UNDER § 80
OF THE STATUTE.

Unto the sheriff of the county of A. The complaint of B.C., inspector of the poor for the parish [*or combination*] of D., with concurrence of the procurator-fiscal of court,—humbly sheweth, That it is enacted, by the statute 8th and 9th Victoria, chapter 83, section 80, That [*here take in the section*]: That E. F. has been guilty of a breach 10 of the said enactment, IN SO FAR AS [*here insert the narrative of the particular offence, taking care to observe the description in the statute, particularly narrating, 1st, That the party is husband or father, or putative father, or the mother, as the case may be ; 2d, The desertion, or neglect, or 15 refusal to maintain, being able to do so ; 3d, That the wife or child has thereby become chargeable on the parish or combination*]. That, therefore, the said E. F. ought to be punished in terms of the foresaid enactment.

May it therefore please your Lordship to grant warrant 20 to apprehend the said E. F., and bring him [*or her*] before you [*or, "to cite him [or her] to appear before you"*] to answer this libel, and thereafter to ordain him [*or her*] to [*here specify the punishment concluded for, taking care to observe the above suggestions.*] 25

According to Justice, &c.

B. C.

Grants concurrence.

A. H., *Procurator-Fiscal.*

NOTE.—The above form may be adapted to complaints under § 79, by observing and inserting the provisions of that section.

RULES ENACTED BY BOARD OF SUPERVISION.

RULES FOR GIVING NOTICES OF MEETINGS.

1. In all cases of meetings in which, by the provision
5 of the act 8 and 9 Vict., c. 83, notice or intimation is
required to be given, without prescribing the particular
form of the notice, or the manner in which the same is to
be given, such notice shall be given in the form and man-
ner following.
- 10 2. In all cases, and in whatever form the notice may be
given, it shall be given ten free days before the day of the
meeting.
3. In all cases, and in whatever form the notice may be
given, it shall specify the day, hour, and place of meeting,
15 and the purpose for which the meeting is called.
4. In all cases such notices shall be affixed to the door
of the parish church.
5. In parishes or combinations in which the number of
persons entitled to attend any meeting shall not exceed one
20 hundred, notice is also to be given to each person by a
written or printed billet; and all such billets put into the
post-office ten free days before the day of meeting shall be
held to have been duly delivered. But where the number
of persons entitled to attend any meeting shall exceed one
25 hundred, notice is to be given by advertisement in one or
more of the newspapers which may be deemed to be most
extensively circulated in the parish or combination, instead
of by billet.

(Signed) W. SMYTHE, Sec.

*Approved by the Right Hon. Sir James Graham,
13th October 1845.*

RULES RELATING TO THE DUTIES OF INSPECTOR OF
THE POOR.

1. The inspector of the poor shall attend all meetings of the parochial board, and make an accurate minute of the proceedings at every meeting, and enter it in a book, and submit the same so entered to the succeeding meeting, to be confirmed by the board and authenticated by the signature of the chairman, as a true record of the proceedings of the board. 5

2. The inspector shall attend, if required, meetings of committees of the parochial board, and keep an accurate minute of the proceedings of such committees, in the same manner as is above directed in regard to meetings of the parochial board. 10

3. The inspector shall conduct the correspondence of the parochial board, according to such instructions as he may receive. 15

4. The inspector shall keep all the accounts, and preserve and be responsible for all books, writings, letters, vouchers and other documents relating to the business of the parochial board, and produce the same when required to the board of supervision, or to any person duly authorised by that board to receive and inspect the same. 20

5. The inspector shall, either when required by the chairman of the parochial board, or at his own instance when the state of the parish business seems to require it, call special meetings of the parochial board. 25

6. All notices of general and special meetings shall be given by the inspector in terms of the regulations of the board of supervision.

7. The inspector shall make such investigations, as to all questions or matters connected with, or relating to, the administration of the laws for the relief of the poor in the parish, as the board of supervision may require, and prepare and transmit all returns and answers relative thereto, in such manner and form as the said board of supervision may direct. 30

8. The inspector shall, from time to time, prepare such

reports as to the state and management of the poor within the parish, as may be required by the parochial board.

9. The inspector shall inquire into, and make himself acquainted with the circumstances of the case of each individual poor person receiving relief from the poor-funds of the parish.

10. The inspector shall keep an accurate list or register of all persons receiving relief, and of the sums paid to each, and of the period during which such relief has been given; and he shall also keep a list of all those who have applied for, and been refused relief, and in such cases he shall state shortly the grounds of refusal.

11. In every case in which application may be made to the inspector for relief (whether the applicant has a settlement in the parish or not), it shall be the duty of the inspector to make immediate inquiry into the circumstances of the case, by visiting, either personally or by an assistant inspector duly appointed by the parochial board, the home of the applicant, if situated within his parish, and by making all necessary inquiries into the state of health, the ability to work, and the means of support of the applicant, and to report the result of such inquiries to the parochial board at their next meeting.

12. The inspector, in addition to the two annual visits required by the statute, must from time to time visit at their dwellings, either personally or by an assistant inspector duly appointed, paupers recently admitted on the roll, especially those with whose habits and character he may not previously have been well acquainted, and likewise all such paupers as he may have reason to suspect of deception or of misapplying the relief given by the parish.

13. It is the duty of the inspector, and of each assistant inspector, to insert in a book kept for that purpose, the date of his visits to the dwelling of each pauper, and any observations he may think it material to make on the conduct and condition of the pauper.

14. The inspector should report to the parochial board at its next meeting, all cases of misapplication by the pau-

per of the relief given by the parish, and should make it known to all the paupers that he is required so to do.

15. The inspector shall return an answer to every application for relief, within twenty-fours of the time of its being made. If, on such inquiry as he shall be able to 5 make within that time, he shall be satisfied that the applicant is in a state of destitution, and a fit object for parochial relief, he shall make such an alimentary allowance as in the circumstances shall be reasonable, until the next meeting of the parochial board, when he shall make a 10 full report thereupon. But if on such inquiry he shall be satisfied that the applicant is not a fit object for relief, he shall refuse the application, and report the refusal, with his grounds for refusing it, to the parochial board at their next meeting: or if he shall be unable within the twenty-four 15 hours to satisfy himself as to the true circumstances of the case, he may delay making a final answer for any period which may appear to him necessary for completing his inquiries, but in that case he shall give such temporary relief, either in food or money, as may seem necessary, until 20 his final answer is made to the applicant.

16. The inspector must also provide for and relieve lunatics, fatuous persons, orphans, foundlings, and generally all destitute persons within the parish, in cases of sudden or urgent necessity, whether such persons have a settle- 25 ment in the parish or not.

17. Whenever any poor person, who shall have become chargeable on the parish, shall be insane or fatuous, the inspector must forthwith report the same to the parochial board; and if that board shall not, within fourteen days 30 from the time when he is declared or known to be insane or fatuous, cause him to be conveyed to and lodged in a lunatic asylum, or other establishment legally authorised to receive lunatic patients, it will be the duty of the inspector to report the same without delay to the board of 35 supervision, and to state the reasons why he has not been so removed; except in those cases in which the parochial board shall have applied for the consent of the board of supervision to dispense with his removal.

18. The inspector must report, at least once in every half year, to the board of supervision all cases of insane or fatuous persons who are in receipt of relief from the parish, and state where, and under whose protection, they are kept and lodged.

19. In all cases of sickness or accident befalling persons entitled to parochial relief, and requiring immediate medical or surgical assistance, the inspector must, upon his own responsibility, take measures for procuring, without delay, such medical aid as can be obtained in conformity with the provisions which may have been made, and the instructions which he shall have received from the parochial board.

20. In every case of sickness or accident, of any person in the receipt of parochial relief, the inspector must, as soon as may be, and from time to time afterwards, visit the home of such sick person, and supply him with such articles as may seem necessary, until the case shall have been reported at the next meeting of the parochial board.

21. If an inspector shall have relieved a poor person found destitute, and belonging to another parish, it is the duty of such inspector, immediately on discovering to what parish such poor person belongs, to send a notice in writing, with a statement of the circumstances, to the inspector of that parish.

22. In all cases where a poor person is removable from one parish to another in Scotland, if the poor person himself is, or alleges that he, or any member of his family, is, from sickness or infirmity, incapable of being removed, the inspector shall not remove him without having previously obtained a medical certificate, stating that such poor person and his family may be removed to the parish to which he belongs without prejudice to his or their health.

23. When a poor person who has become chargeable on a parish is to be removed to England, Ireland, or the Isle of Man, the Inspector shall in every case, before removal, obtain a certificate on soul and conscience, by a regular medical practitioner, setting forth that the health of such person, and that of his family (if he have any), is such as to admit of his being removed.

24. The inspector shall keep full and regular accounts of all monies received and disbursed by him, on account of the relief of the poor.

25. The inspector is bound to observe and execute all lawful orders and directions of the parochial board, applicable to his office. 5
W. SMYTHE, Sec.

*Approved by the Right Hon. Sir James Graham,
20th Oct. 1845.*

“The inspector of the poor must not be an acting member of the parochial board.”—*General Board's Circular*, 5th 10
Sept. 1845.

RULES AND REGULATIONS IN CASES OF PAUPERS COMPLAINING OF INADEQUATE RELIEF.

The board of supervision, by virtue of the powers vested in it by sect. 7 of the act 8 and 9 Vict., c. 83, has made the following Rules to regulate the form and manner in which poor persons seeking redress for inadequate parochial relief, in terms of the act, sect. 74, shall transmit their 15
complaints to the board of supervision.

1. No such complaints in respect of which the rules of the board of supervision shall not have been complied with, will be received by the board.

2. The inspector of the poor in each parish shall at all 20
times be provided with printed applications and schedules for the use of poor persons desiring to lodge such complaints with the board of supervision.

3. The inspector shall deliver a copy of such application and schedule to each poor person on the roll of the parish 25
who may demand it.

4. The inspector, if required by the applicant so to do, shall fill up the schedule in any terms the applicant may desire.

5. If the applicant shall prefer to have the schedule 30
filled up by any other than the inspector, he shall be at liberty to do so.

6. Every such application and schedule, before being transmitted to the board of supervision, must be signed, at

the places indicated in the printed form, by the poor person complaining, with his or her name, or with a mark attested by one witness.

7. Every such schedule, before being transmitted to the
5 board of supervision, shall be delivered open, filled up and signed as above directed, to the inspector, who shall thereafter inscribe upon it such remarks as he may have to make, and sign them with his name at the place indicated for his signature.

10 8. The inspector, if required by the applicant so to do, shall, within twenty-four hours from the time when the schedule shall have been delivered to him for that purpose, open, filled up, and duly signed, forward it to the board of supervision, with such remarks as he may have to make
15 inscribed upon it.

9. If the applicant shall prefer to transmit the schedule to the board of supervision otherwise than through the inspector, he shall be at liberty to do so; and in that case the inspector shall return the schedule to the applicant,
20 with such remarks as he may have to make inscribed upon it, within twenty-four hours from the time when it shall have been delivered, open, filled up, and duly signed, to the inspector.

The applications of poor persons complaining of inadequate relief, and the schedules attached to these applications, which are to be filled up by or for them, shall be in the annexed form.

FORM OF APPLICATION FOR PAUPERS COMPLAINING OF INADEQUATE RELIEF.

TO THE BOARD OF SUPERVISION.

I, _____, one of the poor on the
roll of the parish of _____, complain that
the relief afforded to me is inadequate; and I pray the
board of supervision to investigate the nature and grounds
30 of my complaint, and, in the event of my complaint being

ascertained to be well founded, and not removed by the parochial board of the said parish, then to declare by a minute that I have a just cause of action against the said parish.

Signature or mark of applicant. _____ 5

Attestation. _____

Signature of Witness. _____

Dated _____ of _____, 18 ____.

If the applicant cannot write, the signature by a mark must be attested by a witness in the following form :—"The above is the mark of _____."

N.B.—The applicant must fill up the answers to the queries on the next page. The inspector is bound, if required, to write down the answers for him. The schedule, when filled up, must be left with the inspector, who is directed, within twenty-four hours, to fill up the column for his remarks, and either return the schedule to the applicant, or transmit it to the board of supervision, as the applicant may desire.

Questions.	Answers of applicant.	Inspector's remarks.
1. Present residence ?		20
2. Age ?		
3. Whether single or married ?		
4. Number of children or dependents (if any) living in family ?		
5. Names and ages of such children or dependents ?		25
6. Employment and earnings of such children or dependents ?		
7. If parents alive, and in what circumstances ?		30
8. Names, employment, and earnings of children not living in family ?		
9. Present occupation of applicant ?		
10. Occupation previous to first receiving relief ?		35

Questions.	Answers of applicant.	Inspector's remarks.
11. How long has parochial relief been received ?		
12. Amount of present parochial relief in money, clothing, or of any other kind ?		
13. Whether wholly or partially disabled, and from what cause ?		
14. Does applicant pay any and what rent for house or room now occupied ?		
15. Has applicant any other means or resources besides parochial relief, and to what amount ?		
16. What is the amount of relief now claimed by applicant ?		
17. State any other circumstances which may seem material.		

Signature of applicant. _____

Signature of witness attesting mark. _____

Signature of inspector. _____

Approved by the Right Hon. Sir James Graham, one of her Majesty's Principal Secretaries of State, 18th September 1845.

25 " The board has ordered ' that inspectors of the poor should not give out forms of application to any one applying on behalf of a pauper, without having previously ascertained by personal communication with the pauper, that he or she desires to receive such form of complaint.' Should
30 the pauper be unable to apply in person to the inspector, it is the duty of that officer to visit the applicant, and if required, to fill up the schedule."—*General Board's Circular, 12th Nov. 1845.*

**RULES FOR CONDUCTING THE ELECTION OF MANAGERS
OF THE POOR IN BURGHAL PARISHES OR COMBINA-
TIONS.**

1. When the number and qualification of the persons to be elected managers of the poor, and the day on which they are to be elected, shall have been made known to the inspector, by the board of supervision, it will be his duty forthwith to communicate the same to the chief magistrate 5 of the burgh.

2. The magistrate should then, without loss of time, proceed to fix the hour and the place at which the electors are to meet for the purpose of choosing the managers; they should also name the places, besides the door of the parish 10 church, at which the notices of such meeting shall be affixed, and direct that notice shall also be given by advertisement in one or more newspapers; and if the board of supervision has divided the parish into wards or divisions for the purposes of the election, the magistrates should also 15 name the hour and the place of meeting for each ward, and should immediately communicate the same to the inspector.

3. Having received this communication, it will be the duty of the inspector to give notice of the meeting in such 20 form and manner as the magistrates shall have directed.

4. The magistrates should also name a person, who shall discharge the duties required of the inspector at the election, in case the inspector should be absent or unable to act; and they should also name persons to discharge 25 these duties in each ward or division, if the board of supervision has divided the parish into wards or divisions, for the purposes of the election.

5. The collector and the assistant inspector or assistant inspectors, if any, may be employed to assist the inspector 30 at the election, if necessary.

6. The magistrates should also instruct the collector to furnish the inspector, at least three days previous to the day fixed for the election, with a certified roll of the per-

sons assessed for the relief of the poor who may be entitled to vote at such meeting, in which the names shall be arranged alphabetically, and the number of votes which each person is entitled to give in terms of sect. 24 of the 5 Act 8 and 9 Vict., c. 83, shall be written opposite to his name. And if the parish has been divided into wards for the purposes of the election, then the collector shall furnish the inspector with a roll so prepared, of the persons entitled to vote, and the number of votes each person 10 is entitled to give in each ward.

7. Any person is qualified to vote who is assessed for the relief of the poor, and who shall have paid all sums assessed upon and due by him at the time of election, and who shall not have been exempted from payment on the 15 ground of his inability to pay.

8. When the electors have met, and constituted their meeting, the first step should be to put in nomination fit and qualified persons to be managers.

9. Any person entitled to vote at the meeting may nominate any qualified person as a candidate for the office of 20 manager. But no one ought to be nominated as a candidate whose willingness to serve in the office has not been ascertained.

10. To constitute a sufficient nomination, it is necessary 25 that the candidate should be proposed by one elector, and seconded by another.

11. If the number of qualified persons nominated shall not exceed the number of managers to be elected, such persons shall be held to be duly elected.

30 12. The person who proposes a candidate may withdraw that candidate's nomination; and if so many nominations shall be withdrawn as to reduce the number of qualified candidates to the number of managers to be elected, such qualified candidates whose nominations shall not have been 35 withdrawn, shall be held to be duly elected.

13. If the number of qualified persons nominated, and not withdrawn, shall exceed the number of managers to be elected, the inspector, or, in case of his absence or inability to act, the person named by the magistrates in that event

to act for him at the election, shall proceed to take in writing and collect the votes of the persons entitled to vote at such meeting.

14. When it may be necessary to take in writing and collect the votes as above stated, if the number of persons 5 present and entitled to vote at such meeting shall not exceed one hundred, the inspector, or the person named by the magistrates to act for him, shall then and there take in writing the votes of the persons present and entitled to vote, according to the annexed form (A), and the candidates 10 according to the number of managers to be elected, who shall have a majority of the votes so taken in writing, shall be the managers.

15. Each elector shall be held to have given the whole number of votes to which he is entitled by the Act 8 and 15 9 Vict., c. 83, for each candidate for whom he votes.

16. The inspector shall not in any case receive the votes of any one elector for a greater number of candidates than there are managers to be elected.

17. If the number of persons present, and entitled to 20 vote at such meeting shall exceed one hundred, then if it shall be necessary to take in writing and collect the votes, the inspector, within six lawful days after such meeting, shall leave or cause to be left at the house of each elector a voting paper according to the annexed form (B). 25

18. The voting paper shall contain in the proper columns the name, designation, and residence of each person nominated at the meeting, whose nomination shall not have been withdrawn.

19. The elector shall write his initials in the proper column, against the name of each candidate for whom he votes, and shall sign the paper with his name, or, if he cannot write, with his mark at the place for his signature.

20. The mark of a voter who cannot write his name, must be attested by a witness, and in that case the initials 35 of the voter must be written opposite to the names of the candidates for whom he votes, by the witness who attests the mark.

21. The elector shall deliver or transmit to the inspec-

tor, the voting paper so signed and initialed, within two lawful days from the time when it shall have been left at the elector's house. If not delivered to the inspector within that time the votes shall not be counted.

- 5 22. No such votes, so given by voting paper, shall be valid, if they are given for a greater number of candidates than there are managers to be elected.

23. The inspector shall declare within two lawful days after the expiration of the time allowed for delivering or
10 transmitting to him the voting papers, those persons to be elected managers of the poor (according to the number fixed by the board of supervision), who shall have a majority of votes.

24. In the event of an equal number of votes being given
15 in favour of candidates, the person paying the largest amount of assessment shall be preferred and held to be elected.

25. The inspector shall forthwith intimate to the persons who shall have been so chosen, that they have been
20 elected managers of the poor for the parish.

26. The inspector shall also affix at each place at which the notice of meeting shall have been affixed, a return, in the annexed form (C), of the persons who have been elected managers of the poor, and shall transmit a copy of the
25 same to the board of supervision.

27. If the board of supervision has divided the parish into wards or divisions for the purposes of the election, then the proceedings for that purpose in each ward at the meeting and subsequent to the meeting, shall be the same as if the ward were a separate parish.

FORM A.

ALPHABETICAL ROLL and VOTING LIST of the Persons entitled to Vote at the Election of Managers of the Poor for the Parish of and Ward, for the Year commencing

Names of Electors.	No. of votes each Elector is entitled to give.	Names of Candidates.			

I do hereby certify that this list contains the name of every person entitled to vote in ward of this parish, and the exact number of votes each is entitled to give, for the election of managers of the poor at the election which is to take place on the .

Collector of Assessment for the Poor.

FORM B.

VOTING PAPER for the Parish of _____ and
 Ward, for the Election of _____ Managers of the
 Poor.

Initials of Voter against the Name of the Candi- date for whom he votes.	Names of the Candidates.	Residence of the Candi- dates.	Designation.	Opinion of the Inspector as to Disqualification.

I vote for the persons in the above list against whose
 5 names my initials are placed.

Signature or mark of voter. _____

Signature of witness to the mark. _____

N. B.—The votes will be lost if this paper is not sent
 or delivered to the inspector within two days, or if the
 10 initials of the voter are not written against the names of
 the candidates he votes for, or if they be written opposite
 to more names than there are managers to be elected, or if
 the paper be not signed with the name or mark of the
 voter; and if signed with a mark, it will be lost if the mark
 is not attested.

FORM C.

RETURN of the **MANAGERS ELECTED**, to be affixed to the Door of the Parish Church, and at such other places as the Notice of Meeting shall have been affixed.

Parish of

I do hereby certify that the election of managers of the 5 poor for the parish of _____ was conducted in conformity with the Act 8 and 9 Vict., c. 83, and that the entries contained in the Schedule hereunder written are true.

Names of Candidates.	Residence.	Designation.	No. of Votes given for each.	Names of the Managersselected.

Given under my hand, this _____ day of _____ 10

Inspector of the Poor for the Parish of _____

W. SMYTHE, Sec.

*Approved by the Right Hon. Sir James Graham, Bart.,
one of Her Majesty's Principal Secretaries of State, 15
20th October 1845.*

INSTRUCTIONS FOR THE GUIDANCE OF PARISHES NOT
BURGHAL, AND NOT COMBINED, IN THE ELECTION OF
MEMBERS TO SERVE IN THE PAROCHIAL BOARDS.

1. When the number of persons to be elected members of the parochial board, and the day on which they are to be elected, shall have been made known to the inspector, by the board of supervision, it will be his duty forthwith
5 to call a meeting of the present parochial board, and to communicate the same to them.

2. The parochial board should then, without loss of time, proceed to fix the hour and the place at which the electors are to meet for the purpose of choosing the elected
10 members: they should also name the places, besides the door of the parish church, at which the notices of such meeting shall be affixed, and direct that notice shall also be given by advertisement in one or more newspapers if they shall think fit, and should immediately communicate
15 the same to the inspector.

3. Having received this communication, it will be the duty of the inspector to give notice of the meeting, in such form and manner as the parochial board shall have directed.

20 4. The parochial board should also name a person, who shall discharge the duties required of the inspector at the election, in case the inspector should be absent or unable to act.

5. The collector and the assistant inspector or assistant
25 inspectors, if any, may be employed to assist the inspector at the election, if necessary.

6. The parochial board should also instruct the collector to furnish the inspector, at least three days previous to the day fixed for the election, with a certified roll of the
30 persons assessed for the relief of the poor who may be entitled to vote at such meeting, in which the names shall be arranged alphabetically, and the number of votes which each person is entitled to give in terms of sect. 24 of the Act 8 and 9 Vict. c. 83, shall be written opposite to his
35 name.

7. Any person is qualified to vote who is assessed for the relief of the poor, and who shall have paid all sums assessed upon and due by him at the time of election, and who shall not have been exempted from payment on the ground of his inability to pay, provided he be not the owner of lands and heritages within the parish of the yearly value of twenty pounds and upwards, or a provost or bailie of any royal burgh in the parish, or a member of the kirk session, and, as such, a member of the parochial board. 5

8. When the electors have met, and constituted their meeting, the first step should be to put in nomination fit and qualified persons to be elected members. 10

9. Any person entitled to vote at the meeting may nominate any qualified person as a candidate for the office of elected member. But no one ought to be nominated as a candidate whose willingness to serve in the office has not been ascertained. 15

10. To constitute a sufficient nomination, it is necessary that the candidate should be proposed by one elector, and seconded by another. 20

11. If the number of qualified persons nominated shall not exceed the number of members to be elected, such persons shall be held to be duly elected.

12. The person who proposes a candidate may withdraw that candidate's nomination; and if so many nominations shall be withdrawn as to reduce the number of qualified candidates to the number of members to be elected, such qualified candidates whose nominations shall not have been withdrawn, shall be held to be duly elected. 25

13. If the number of qualified persons nominated, and not withdrawn, shall exceed the number of members to be elected, the inspector, or, in case of his absence or inability to act, the person named by the parochial board in that event to act for him at the election, shall proceed to take in writing and collect the votes of the persons entitled to vote at such meeting. 30

14. All persons are qualified to be elected members who are qualified, as above stated, to vote at such meeting.

15. When it may be necessary to take in writing and collect the votes as above stated, if the number of persons

present and entitled to vote at such meeting shall not exceed one hundred, the inspector shall then and there take in writing the votes of the persons present and entitled to vote, according to the annexed form (A.), and the candidates according to the number of members to be elected, who shall have a majority of the votes so taken in writing by the inspector, shall be the elected members.

16. Each elector shall be held to have given the whole number of votes to which he is entitled by the Act 8 and 10 9 Vict. c. 83, for each candidate for whom he votes.

17. The inspector shall not in any case receive the votes of any one elector for a greater number of candidates than there are members to be elected.

18. If the number of persons present, and entitled to 15 vote at such meeting shall exceed one hundred, then if it shall be necessary to take in writing and collect the votes, the inspector, within six lawful days after such meeting, shall leave or cause to be left at the house of each elector, a voting paper according to the annexed form (B).

20 19. The voting paper shall contain in the proper columns the name, designation, and residence of each person nominated at the meeting whose nomination shall not have been withdrawn.

20. The elector shall write his initials in the proper 25 column, against the name of each candidate for whom he votes, and shall sign the paper with his name, or, if he cannot write, with his mark at the place for his signature.

21. The mark of a voter who cannot write his name, must be attested by a witness, and in that case the initials 30 of the voter must be written opposite to the names of the candidates for whom he votes, by the witness who attests the mark.

22. The elector shall deliver or transmit to the inspector, the voting paper so signed and initialed, within two 35 lawful days from the time when it shall have been left at the elector's house. If not delivered to the inspector within that time the votes shall not be counted.

23. No such votes, so given by voting paper, shall be valid, if they are given for a greater number of candidates 40 than there are members to be elected.

24. The inspector shall declare within two lawful days after the expiration of the time allowed for delivering or transmitting to him the voting papers, those persons to be elected members of the parochial board (according to the number fixed by the board of supervision), who shall have a majority of votes. 5

25. In the event of an equal number of votes being given in favour of candidates, the person paying the largest amount of assessment shall be preferred and held to be elected. 10

26. The inspector shall forthwith intimate to the persons who shall have been so chosen that they have been elected members of the parochial board of the parish.

27. The inspector shall also affix at each place at which the notice of meeting shall have been affixed, a return, in the annexed form (C), of the persons who have been elected members of the parochial board, and shall transmit a copy of the same to the board of supervision. 15

28. If the parochial board has named a committee to administer the laws for the relief of the poor, the inspector shall call a meeting of, and communicate with such committee, who may perform the functions herein assigned to the parochial board in respect of the election of members. 20

FORM A.

ALPHABETICAL ROLL and VOTING LIST of the Persons entitled to Vote at the Election of Members to serve in the Parochial Board of the Parish of _____ for the Year commencing _____ 25

Names of Electors.	No. of votes each Elector is entitled to give.	Names of Candidates.			

I do hereby certify that this list contains the name of every person entitled to vote in this parish, and the exact number of votes each is entitled to give for the election of members of the parochial board at the election which is to take place on the

Collector of Assessment for the Poor.

FORM B.

VOTING PAPER for the Parish of _____ for the Election of _____ Members of the Parochial Board.

Initials of Voter against the Name of the Candidate for whom he votes.	Names of the Candidates.	Residence of the Candidates.	Designation.	Opinion of the Inspector as to Disqualification.

10 I vote for the persons in the above list against whose name my initials are placed.

Signature or mark of voter. _____

Signature of witness to the mark. _____

N.B.—The votes will be lost if this paper is not sent or delivered to the inspector within two days, or if the initials of the voter are not written against the names of the candidates he votes for, or if they be written opposite to more names than there are members to be elected, or if the paper be not signed with the name or mark of the

voter ; and if signed with a mark, it will be lost if the mark is not attested.'

FORM C.

RETURN of the MEMBERS elected, to be affixed to the door of the Parish Church, and at such other places as the Notice of Meeting shall have been affixed. 5

Parish of

I do hereby certify that the election of members to serve in the parochial board of the parish of was conducted in conformity with the Act 8 and 9 Vict., c. 83, and that the entries contained in the schedule hereunder 10 written are true.

Names of Candidates.	Residence.	Designation.	Number of Votes given for each.	Names of the Members Elected.

Given under my hand this day of

Inspector of the Poor for the Parish of

RULES FOR ENTERING THE NAMES OF PERSONS ENTITLED TO VOTE ON BEHALF OF MEMBERS OF JOINT STOCK OR OTHER COMPANIES, AND OF JOINT OWNERS OR JOINT OCCUPANTS.

By the Act 8 and 9 Vict., c. 83, § 25, it is enacted, that 15
 "Any member or officer of such corporation, joint stock or

other company, or any one of such joint owners or joint occupants, whose name shall be entered by order of such corporation or company, or the governing body thereof, or of such joint owners or joint occupants, in the books of the
 5 parish or combination, in the manner that may be directed by the board of supervision, and who shall have complied with the regulations regarding voting, shall be entitled to vote in the same manner as if he were the owner or occupant of such lands and heritages."

- 10 The board of supervision directs that the name of such person shall be entered in the books of the parish or combination, by writing after his name in the said books the word "for," followed by the designation under which business is transacted by the parties by whose order his name
 15 is to be entered, if these parties be a corporation, joint stock or other company; but if these be not a corporation, joint stock or other company, but joint owners or joint occupants, then after the name ordered to be entered shall be written the words "for himself," "and," followed by the
 20 names of the other joint owners or joint occupants with him, by whose order his name has been entered.

W. SMYTHE, Sec.

*Approved by the Right Hon. Sir James Graham,
 13th Oct. 1845.*

REGULATIONS AS TO GRANTING PASSES TO PAUPERS,
 4TH DECEMBER 1845.

- " Resolved—That the practice of granting passes to paupers proceeding from one part of the country to another, authorising them to seek relief in the parishes
 25 through which they may pass, is not contemplated by the Poor-Law Amendment Act (8th and 9th Vict., cap. 83), which provides otherwise for the relief and removal of poor persons who may become destitute at a distance from the parish of their settlement.

“ That the practice of granting such passes is productive of great inconvenience and evil ; and that the board of supervision has therefore prohibited all inspectors from granting them.

“ That it is very desirable these passes should no longer 5
be granted by magistrates, justices of the peace, or other persons who may hitherto have been in the practice of granting them ; and that the board of supervision requests the co-operation of all magistrates, justices of the peace, and others, to put an end to the practice. 10

“ That a copy of this resolution be transmitted to all town-clerks, justices of the peace clerks, sheriff-clerks, and others, to be communicated to all parties, whose co-operation to effect this object is desirable.”

15

“ Inspectors will understand that they are strictly prohibited from granting passes, even at the applicant’s own request.”—*General Board’s Circular, 29th Oct. 1845.*

RULES AS TO MEDICAL ADVICE.

19. “ In all cases of sickness or accident befalling persons entitled to parochial relief, and requiring immediate 20
medical or surgical assistance, the inspector must, upon his own responsibility, take measures for procuring, without delay, such medical aid as can be obtained in conformity with the provisions which may have been made, and the instructions which he shall have received from the pa- 25
rochial board.

20. “ In every case of sickness or accident, of any person in the receipt of parochial relief, the inspector must, as soon as may be, and from time to time afterwards, visit the home of such sick person, and supply him with such 30
articles as may seem necessary, until the case shall have been reported at the next meeting of the parochial board.”

REMOVAL OF ENGLISH AND IRISH PAUPERS.

Board of Supervision, Edinburgh, 29th Jan. 1846.

SIR,—I have received instructions from the board of supervision to transmit to you the following recommendations, in regard to the removal of English and Irish paupers who
5 may have become chargeable upon your parish :—

1st, That with reference to the 77th section of the act 8th and 9th Victoria, c. 83, when it may be necessary to remove English or Irish paupers from Scotland, care should be taken that they are removed in such manner as may not
10 be injurious to their health.

2d, That in cases of women and children, persons recently recovered from sickness, and the weak and infirm of all descriptions, more especially during a voyage by sea in the winter season, such accommodation should be provided
15 as may protect them from injury by exposure to inclement weather.

3d, That in all cases, such poor persons as are removed by sea, should be conveyed to such port, with which there is a regular communication, as may, on a consideration of
20 the whole circumstances, afford paupers the greatest facility and convenience for speedily arriving at the place of their ultimate destination.

I have to request that you will take an early opportunity of submitting this letter, with the foregoing recommendations, to the parochial board of your parish.—I am, Sir,
25 your obedient servant,

W. SMYTHE, Sec.

The Inspector of Poor.

CIRCULAR AS TO REMOVING PAUPERS APPLYING FOR
PAROCHIAL RELIEF, BUT NOT HAVING A SETTLEMENT
IN THE PARISH TO WHICH THEY APPLY.

Board of Supervision,

April 1846.

SIR,—The board of supervision has learned, by communications received from various parts of Scotland, that poor persons, after having applied for and received relief from a parish, have on many occasions been improperly removed 5 and forwarded elsewhere, without any measures having been taken to ascertain to what parishes such poor persons belong. As abuses appear to have arisen from the law upon this subject being but imperfectly understood, I am desired by the board of supervision to inform you, and all 10 inspectors of the poor, that, under the existing law, any destitute poor person, legally entitled to relief, by applying to a parish for relief, although he have no settlement therein, acquires a right to be maintained by the parish to which such application is first made, and that he is to be consi- 15 dered and treated in all respects as a pauper belonging to that parish, until the parish in which his settlement is (if in Scotland) shall have been admitted, or otherwise clearly established; or, if he have no settlement in Scotland, then until such time as he shall have been removed in the man- 20 ner directed by the statute; and, further, that such poor person must not, upon any plea or pretence whatsoever, be removed or forwarded to another parish in Scotland, except to the parish of his settlement, after it has been admitted or established.

25

Should any inspector, therefore, after this notice, remove a poor person who has applied for relief, or provide him with means for the purpose of removal to any other parish in Scotland than the parish of his settlement, as ascertained, such inspector will, by so doing, be acting in 30 direct opposition to the Poor-Law Amendment Act, and

render himself amenable to the censure of the board of supervision. I am, Sir, your obedient servant,

W. SMYTHE, *Sec.*

To the Inspector of the Poor of the Parish of

RULES AND REGULATIONS FOR CONDUCTING THE BUSINESS OF THE BOARD OF SUPERVISION.

5 1. That at all meetings of the board, in the absence of the chairman nominated by Her Majesty, the chair shall be taken by the senior member present,—and that he shall be held to be the senior member who has for the longest time from the date of that meeting, and without intermis-
10 sion, been a member of the board.

2. That the seniority of the present members shall be according to the order in which they are named in the act of parliament by which the board of supervision is constituted, the first named being the senior, and first the *ex of-*
15 *ficio* members, in the order in which they are named, and then the members appointed by commission, according to the dates of their commissions.

3. That if two or more members shall hereafter be appointed by one commission, their seniority shall be accord-
20 ing to the order in which they are named in the commission, the first named being the senior.

4. That the chairman shall have both an original and a casting vote, in case of equality.

25 *Approved by the Right Hon. Sir James Graham,*
30th March 1846.

FORM OF REGISTER OF PAUPERS.

	No.	
	Name of Pauper.	1.
	Present residence.	2.
	Married or single, widow or widower. If child, orphan, deserted, or bastard.	3.
	Name of each dependent living with Pauper.	4.
	<div>Years.</div> <div>Age.</div>	5.
	Place of birth.	6.
	Trade or occupation.	7.
	If wholly or partially disabled.	8.
	Description of disablement.	9.
	Means and Resources of Pauper besides Parochial Relief.	10.
	Names and weekly earnings of Parents.	11.
	Names, ages, and earnings of children not living with Pauper, and whether married, and number of children.	12.
	Date when admitted on Roll.	13.
	Amount of relief in money.	14.
	Amount of relief in food, clothing, fuel, lodging, or of any other kind.	15.
	Date and cause of removal from Roll.	16.
	Remarks.	17.

Explanations.

The numbers will refer to the names in the first column only.

No name of any poor person or dependent must be inserted, unless he or she is seen by the inspector or an assistant inspector.

A separate line shall be assigned to each pauper, and also to each dependent, in order that various columns may be filled up with reference to each individual pauper or dependent separately.

COLUMN 1. In the first column will be inserted only the name of the head of the family or the actual recipient of the relief. If the relief is given for the sustentation of a dependent or dependents, and not for the sustentation of the head of the family or the actual recipient, this must be stated as,

Jane Orr,

for her child. _____

Janet Wilson or Dick,

for her six children. _____

When a child, who is boarded or living with persons on whom it is not legally dependent, is receiving relief, the name of the child will be inserted in the first column.

COLUMN 4. The name of each dependent living with the person whose name is in the first column must be inserted on a separate line in the order of their respective ages.

COLUMN 5. If the age of any pauper or dependent cannot be accurately ascertained, it must be stated as nearly as may be.

COLUMN 8. In this column, state not only whether the pauper is wholly or partially disabled, but also the condition of each of the dependents, as the wife or children, and what they may be able to earn, and if any of them are disabled, so as thereby to become a greater burthen upon the parents, they should be stated as wholly, or partially disabled, and the description of disablement should be inserted in the next column.

COLUMN 9. In cases arising from infirmity of body, specify thus:— as “blind”—“deaf and dumb”—“lost use of one hand,” or “of both hands,” “of one leg,” “or both legs,”—“feeble old age,” “helpless old age,”—“helpless from palsy,” &c. In cases arising from infirmity of mind, state the nature and extent of the infirmity, as, “lunatic, harmless”—“lunatic, dangerous”—“weak in mind”—“absolute idiot,” &c.

COLUMN 12. It is desirable when the children are not residing in the parish, to obtain from the places of their residence the information required to fill up this column.

COLUMN 17. In this column should be inserted, amongst other remarks, any property which, on the death of a pauper, may be recovered by the parish on assignment by the pauper; and when a pauper is admitted upon the roll by order of the sheriff, that fact must in all cases be noted.

APPLICATIONS BY PAUPERS FOR RELIEF MAY BE IN
THE FOLLOWING OR SIMILAR TERMS.

N.B.—No particular form has been prescribed by the statute, or by the board of supervision, nor is it required by any enactment, that the claim for relief be in writing, though the deliverance ought uniformly to be so.
—See p. 76, No. 114, and p. 278, note.

5

*To the Honourable the Poor's Board for the Parish
of ———,*

The Petition of *A. B.*, at _____ Humbly sheweth,
That the applicant is unable from [*age, or infirmity, &c.*]
to support himself, and is in immediate need of parochial 10
relief. His situation, circumstances, and settlement will
appear by the statement [*hereto annexed*] or [*afforded to the*
inspector], and he is ready to give every information in his
power in regard thereto. He prays for immediate main-
tenance *ad interim*, reserving relief against all parties lia- 15
ble, and, after inquiry, to be placed on the roll of paupers
for permanent support.

(Signed) _____.

Lodged with me on the _____ day of _____ 18 _____ at
o'clock _____ noon.

20

(Signed) _____, *Inspector.*

The STATEMENT above referred to, may consist of short answers to the following queries, and should be added by the inspector to the petition when lodged, if not previously done:—What is your age? place, and parish of birth?—When did you first come to this parish?—How long have you lived here, and in what places?—Have you lived in any other parish since that time? and if so, where, when, and how long?—How did you support yourself when you first came here?—What is your trade or occupation?—Your average weekly earnings?—When did you first require charity?—Are you totally unable to work?—From what cause?—When did you become so?—Or what can

you earn per week?—Who is your landlord?—What is your house-rent?—Are you married?—Have you a family, and how many?—Their age?—Their earnings?—Have you parents, children, or any relatives able to contribute to
 5 your support?—Their residence, circumstances, and other particulars?—Are any persons dependent on you?—What is the state of your health?—Have you had any medical attendant, and who?—Have you any property, or other means, or resources, and what?—Have you ever before re-
 10 ceived, or applied for, parochial relief?—What is the amount of relief now claimed?—State any other circumstances which may seem material?

Note.—In cases of married women and lawful children these queries apply to the husband or father respectively; in cases of illegitimate children, to the mother;—in
 15 other cases, to the applicant himself.

COMPLAINT TO SHERIFF ON REFUSAL OF RELIEF.

[This is the form used in Edinburgh.]

In the Application at the instance of _____ against
 the Inspector of the Poor for the Parish of _____

20 _____ Edinburgh, [date]

The sheriff-substitute, having heard the verbal statement of the applicant, who states [here insert briefly the substance of applicant's statement]

That she has applied to the said inspector for relief,
 25 and that she has been refused;

ORDERS the said inspector to afford relief to the applicant in the mean time, until said inspector shall lodge with the clerk of court a statement in writing, shewing why such relief has been refused; and which state-
 30 ment HE IS HEREBY APPOINTED to lodge within _____ days from this date. (Signed) _____.

Addressed on back—"Sheriff-Office—Poor-Law Intimation—Immediate. To the Inspector of the Poor for the parish of _____."

NOTICE, UNDER SECT. 71, OF A PAUPER HAVING
BECOME CHARGEABLE.

Case of _____ residing at _____

Place and date.

SIR,—In terms of the act 8th and 9th Vict. cap. 83,
sect. 71, I beg to give notice that the above-named person,
who appears to have a settlement in the parish of _____ 5
has become chargeable as a pauper in this
parish, which claims relief from the parish of settlement.
I am, Sir, your most obedient servant,

Inspector of Poor.

To Mr _____, Inspector of the Poor of the _____ 10
parish of _____

Note.—A copy of this notice, with evidence of its date and
forwarding should be carefully preserved in every case.

COMPLAINT FOR DESERTION OF WIFE.

Unto the Sheriff of the county of _____

The Complaint of A. B., Inspector of the Poor of the _____ 15
parish of _____ with concurrence of
the Procurator Fiscal of Court, Humbly sheweth—

That it is enacted by the statute 8th and 9th Victoria,
cap. 83, sect. 80, "That every husband," &c. [narrate the
whole section.] 20

That J. G. [design him] has been guilty of a breach of
the said enactment, in so far as—

1. The said J. G. is the husband of C. D. [design her],
they having been married at _____ on [insert date].

2. That the said J. G., during the two last years and 25
upwards, has entirely deserted and neglected to maintain
the said C. D., and now refuses to maintain her, notwith-
standing his being able to do so, having such an income
from his trade or business of _____ as enables him
to maintain her or to contribute to her maintenance.

3. In consequence of the bad health and infirmity of the said C. D., and in consequence of her said husband having so deserted and neglected or refused to maintain her, she has become chargeable to the said parish of

- 5 That, therefore, he, the said J. G., ought to be punished in terms of the foresaid enactment.

May it therefore please your Lordship, to grant warrant to apprehend the said J. G., and bring him before you, to answer to this libel: And, thereafter, to ordain him to be punished by imprisonment for a period
10 not exceeding 60 days, or by a fine not exceeding ten pounds sterling, as to your Lordship may seem meet.
—According to Justice, &c.

(Signed) A. B., *Inspector*.

- 15 Concurrence granted.

(Signed) E. F., *Procurator-Fiscal*.
[Date.]

Petition for order of removal of Pauper born in Ireland, England, or the Isle of Man, under sec. 77th and 78th of the Poor-Law Act. See Schedule, p. 162.

Note.—By the Act 10th and 11th Vict., c. 33, p. 163, such warrants of removal may now be granted without any
20 previous complaint.

Unto the Honourable (the Sheriff of) or (Her Majesty's Justices of the Peace for) the county of
the Petition and Complaint of
Inspector of the Poor of the parish of
25 Humbly Sheweth,
That A. B., now residing in has
become chargeable to the parish of
and is now in the course of receiving parochial relief in
that parish.
30 That the said A. B. was born in [Ireland, England, or
the Isle of Man, as the case may be.]
That the said A. B. has never acquired a settlement in

any parish or combination in Scotland, or if ever acquired, such has not been retained.

A certificate on soul and conscience by E. F., a regular medical practitioner, setting forth that the health of the said A. B. is such as to admit of his removal, is herewith 5 produced.

May it therefore please your Honours to grant warrant to officers of Court to apprehend, or cause the person of the said A. B. to be brought before your Honours ; and, on the facts before stated being admitted 10 or proved, to grant an order or warrant for the removal of the said A. B. to [Ireland, &c., as the case may be] all in terms of, and in conformity with, the Act of Parliament of the 8th and 9th years of the reign of Her present Majesty Queen Victoria, intitled, " An Act for the Amendment and better Ad- 15 ministration of the Laws relating to the Relief of the Poor in Scotland," cap. 83, sec. 77 and 78.—According to Justice, &c.

Proceedings in the case of Rose Donally for returning after removal to Ireland.

Order for Removal to Ireland.

Edinburgh, 17th June 1846.—We, James Gray and 20 John Ritchie, Esquires, two of the Justices of the Peace of the county of the city of Edinburgh, do hereby order and adjudge Rose Donally, who has become, and is now actually chargeable to the parish of Edinburgh, to be removed with her child Mary Donally, and conveyed to Ireland, in pursuance of the provisions of an Act made and passed in the 8th and 9th years of the reign of Queen Victoria, intituled, " An Act for the Amendment and better Administration of the Laws relating to the Relief of the Poor in Scotland." 25 (4th August 1845.)

(Signed)

JAS. GRAY, J. P.
J. RITCHIE, J. P.

Certificates of Removal.

I, Hugh Fraser, having been put in possession of an order of removal by James Gray and John Ritchie, Esquires, two of the Justices of the Peace of the county of the city of Edinburgh, of which the foregoing is a true
 5 copy, DO HEREBY CERTIFY, THAT Rose Donally and her child Mary Donally, therein named, were placed by me on board of the "Aurora" steam-vessel, Captain Anderson, along with said order of removal, the said Captain Anderson having undertaken to land them at Belfast in Ireland, in
 10 terms of the said order. Witness my hand, this seventeenth day of June, Eighteen hundred and forty-six years.

(Signed) HUGH FRASER.

I, John Anderson, commander of the steam-vessel "Aurora," do hereby certify that I saw the said Rose
 15 Donally and her child Mary Donally landed at Belfast, in Ireland this day, in terms of the order of removal. Witness my hand, this eighteenth day of June, Eighteen hundred and forty-six. (Signed) JOHN ANDERSON.

Complaint against Pauper for Returning after Removal.

Unto the Honourable the Sheriff of the county of Edinburgh or his substitutes, the complaint of Messrs
 20 George Small and John Hay, Inspectors of the Poor of the parish and city of Edinburgh, or either of them, with concurrence of the Procurator-Fiscal of Court,

Humbly Sheweth,

25 That it is enacted by the statute 8th and 9th Victoria, cap. 83, sec. 79,—“That if any person,” &c. (here the whole section is quoted)—That Rose Donally, a native of Ireland, now an inmate in the Edinburgh Charity Workhouse, or residing elsewhere in Edinburgh, or its vicinity, and within
 30 your Lordship’s jurisdiction, has been guilty of a breach of the said enactment, in so far as,—

1. The said Rose Donally, and her child Mary Donally, who had become actually chargeable to the said parish of the city of Edinburgh, without having acquired a

settlement therein, or in any parish or combination in Scotland, were, in pursuance of the provisions of the aforesaid statute, removed, conveyed to, and landed, at Belfast in Ireland, upon the 18th day of June last 1846, under, and in virtue of, an order of removal, under the hands of James 5
Gray and John Ritchie, Esqrs., two of the Justices of the Peace for the county of the city of Edinburgh, bearing date the 17th day of the said month of June last.

2. The said Rose Donally with her said child Mary Donally, since they were removed to Ireland as aforesaid, 10
have returned to Scotland and applied for relief, and have again become chargeable to the said parish of the city of Edinburgh, without having obtained a settlement therein.

That, therefore, the said Rose Donally ought to be punished in terms of the foresaid enactments. 15

May it therefore please your Lordship, to grant warrant to apprehend the said Rose Donally, and bring her before you to answer this libel; and thereafter to ordain her, the said Rose Donally, to be punished by imprisonment for such a period, not exceeding sixty 20
days, as to your Lordship may seem proper. According to justice, &c.

21st December 1846.

Concurrence granted.

[Signatures of P.-F. and Inspectors.] 25

Edinburgh, 22d December 1846.—The sheriff-substitute having considered the complaint, grants warrant to officers of Court to apprehend the said Rose Donally, and to bring her to answer the same. Also grants warrant to cite witnesses for both parties. (Signed) G. TAIT. 30

Edinburgh, 24th December 1846.—Compeared the said Rose Donally, and the libel being read over to her, she answers, "I am guilty as libelled. I cannot write."

(Signed) G. TAIT.

Edinburgh, Eo. die.—The sheriff-substitute finds the 35

defender guilty as libelled in terms of her own confession, and therefore sentences and adjudges her to be imprisoned in the prison of Edinburgh for sixty days from this date.

(Signed) G. TAIT.

- 5 *Edinburgh, Eo. die.*—Receive the prisoner's child upon a certificate from a medical practitioner, viz., Dr William Tait, that it would be injurious to the child's health, to be separated from the mother.

(Signed) G. TAIT.

DECISIONS UNDER THE NEW POOR-LAW

IN THE

SHERIFF COURTS, &c.

1. *Widow Yeaman v. Inspector of Alyth (Perthshire.)*

Revised by Sheriff-Substitute.

Held not a sufficient reason for a refusal of parochial relief, that the pauper had a son who was able to support her; but the right of the parish to operate its relief, against the son, reserved.

Widow Yeaman, a poor woman in Alyth, had applied for parochial relief, but her application was refused. She thereupon presented a petition to the sheriff, in terms of the 73d section of the Act, complaining of the refusal, and craving that the inspector should be ordained to afford her needful sustentation. The inspector objected—1st (in point of form), That the petition to the sheriff was not framed in the more complex form required by the Act of Sederunt, regulating the ordinary procedure in sheriff courts;* and, 2dly (on the merits), That the pauper had a son, who, although for some time past out of work, could now get sufficient employment to support his mother and himself. Both defences were repelled. The following interlocutor and note were issued by the sheriff-substitute (Barclay).

“*Perth, 22d October 1845.*—Having advised the petition

* See Act of Sederunt since passed, 12th February 1846, p. 165, line 7.

of the applicant for parochial aid, and the statement of the reasons for refusal thereof, given in by the inspector for the poor of the parish of Alyth—Finds that it is not disputed that the applicant has a settlement within the said parish, and has made application for, and been refused relief, from the funds provided for the maintenance of the poor thereof: Finds that in the reasons of refusal it is admitted that the applicant is about seventy years of age, that she has been confined to her house, and latterly to her bed, and that she has not of herself the means of maintenance: Finds that the sole ground of refusal is the alleged obligation in law, and ability in point of fact, of a son of the applicant to support his mother: Finds, under these circumstances, that on the face of the statement of the reasons of refusal, there is sufficient to decide the case without the necessity of a record being made up: Finds that the reasons of refusal are bad in law, and repels the same; and ordains the inspector of the poor of the said parish immediately to afford needful sustentation to the applicant, in terms of law, reserving entire the claim of relief of the parish against the applicant's son, for reimbursement of such sums as may be expended on his mother, with his objections thereto, as accords: Finds the defender liable in expenses, &c.

(Signed) “ HUGH BARCLAY.

“*Note.*—This is the first case in this court under the new and most delicate jurisdiction conferred on sheriffs by the Poor-Law Act of last session, to review the decisions of parochial boards where they wholly refuse relief to applicants. The inspector assumes that the application to the sheriff is not in form as required by the Act of Sederunt. The 73d section of the Act of Parliament mentions no form of application, so that, perhaps, on a mere letter from the applicant, the sheriff might call on the inspector for his statement of reasons of refusal.* It is only on the lodgement of such statement that the act requires the appointment of an agent for the applicant.

* See Act of Sederunt since passed, 12th February 1846, p. 165, line 8.

"The sheriff has the power, at the very first, to order interim relief, if he be of opinion that the applicant, on the facts stated by him, is legally entitled to relief; but the substitute is of opinion that it is better, except in extreme cases, to delay such order until the inspector states the reasons of refusal. It is preferable that the relief be delayed, rather than first given and afterwards recalled; and there must always be a presumption of right on the part of the parochial authorities which requires to be removed by inquiring into the facts.*

"On the merits of the claim there is no room for doubt. The inspector admits that the applicant is an old bedrid woman, without the means of support. The duty of aliment is no doubt, both in nature and law, imposed on the son; but the primary obligation that no person, who cannot support himself, shall perish through want of the necessities of life, rests against the public, through the public authorities appointed for that end. It is no reason because the son fails in his duty, that the parish authorities should neglect theirs. It is repugnant to all feeling, that the son must be coerced into his duty by the starvation of his helpless mother. The present case cannot be converted into an action of relief, at the instance of the parish, against the son. Until they have made advances, they are perhaps not in title to make such inquiries. Even were it competent, a record and proof would require to be gone into as to the means and substance of the son; and after all, in this action, no decree could go out against the son, but merely the probably abortive compulsion on him of the withdrawal of other relief to the mother. The case of Weepers, 20th June 1844,† is a direct authority for going direct against the parish.

(Initialed) "H. B."

Affirmed by Sheriff Whigham, on appeal.

* The opinion here intimated has since been departed from in the practice of this court.

† P. 67, No. 76.

2. *W. R. v. Inspector of Alyth (Perthshire.)*

Revised by Sheriff-Substitute.

A person, not alleged to have become a proper object of parochial relief prior to the passing of the New Poor-Law Act (4th August 1845), is not entitled to found on a settlement alleged to have been acquired (before the passing of that Act) by a residence of three years.

The *curator bonis* of a lunatic applied to the sheriff of Perth for an order on the inspector of the parish of Alyth to support the lunatic, who had, previous to his being removed by his friends to an asylum, been three years and seven months resident in that parish. It was not averred that he had been a proper object of parochial relief prior to the passing of the New Poor-Law Act (4th August 1845). On this application, and without calling for reasons of refusal from the parish, the sheriff-substitute (Mr Barclay) pronounced the following judgment and note:—

“3d April 1846.—The sheriff-substitute, having considered the facts stated in the application, finds it admitted that, at the date of the Royal assent to the Poor-Law Act, 8 and 9 Victoria, chapter 83, the applicant was not resident in the parish of Alyth: Finds it admitted that he had not resided in said parish for five years continuously, nor is it alleged (but the facts averred are to the contrary) that, previous to the passing of said Act, he had acquired a settlement in said parish by virtue of a residence of three years, *and* had become a proper object of parochial belief: Therefore, being of opinion, upon the facts stated, that the applicant is not legally entitled to relief, dismisses the application, and decerns.

“*Note.*—The applicant is said to have been a writer in Alyth, where he had resided for three years and seven months. This would have been a good settlement before the New Poor-Law, but that law introduces the period of five years, with the exception, that those who had, previously to the Act, been proper objects of parochial relief, coupled with three years’ residence, were to be held as having ob-

tained a settlement. It cannot be pretended, on the facts stated, that, *at the time* the applicant was removed from Alyth he was a proper object for parochial relief. It is not alleged that any application was made to the parish, or that the removal to the asylum was with their consent. It would appear to have been the act of his father, a parochial school-master, and on whom rests primarily the duty of supporting his son. A *curator bonis* was appointed to administer the lunatic's estate, a fact quite subversive of the supposition of pauperism. It is not sufficient that in the end the estate may be found insolvent. Although the claim rested against the parish of Alyth, it does not follow that the board would be bound to aliment him in a lunatic asylum. If he was dangerous to be at large, a remedy under another Act might be resorted to."

The above interlocutor was affirmed by Mr Sheriff Whigham, who added the following

"*Note.*—The object of *the proviso* at the close of the 76th section of the *Poor-Law Amendment Act*, was to prevent paupers on the roll, or those who were entitled to be placed there, *at the date of the passing of the statute*, from losing the right possessed by them under the old state of the law, in regard to *settlement* in a parish *by residence* FOR THREE YEARS, while the previous enactment of the statute, that from and after its date no person shall be held to *have acquired* a settlement in any parish or combination *by residence therein*, unless such person shall have resided for five years continuously in such parish or combination, and shall have maintained himself without having recourse to common begging, either by himself or his family, and without having received or applied for parochial relief, is made expressly applicable to all persons other than those who, *combined with three years' residence*, had, *before the passing of the Act*, also become proper objects of parochial relief."

3. *Elizabeth McCamon or Armstrong, a pauper, v. Parishes of Leswalt, Stranraer, and Stoneykirk (Wigtownshire.)*

Revised by Sheriff.

1. A woman having been supported in Scotland for many years by her son, a domiciled Englishman, who was not alleged to have been born or to have resided in Scotland,—held that the son's obligations were to be determined by the law of England; and, 2d, It not being averred that by English law he was under a legal obligation to provide for his parent,—held that, in a question of settlement, his contributions to his mother were to be regarded as voluntary gifts.
2. A settlement held to have been acquired by residence, although the party, during the whole period thereof, was maintained by the voluntary gifts of a relation, not liable in law for her support, it being admitted that the party was then free from disease and infirmity, and not otherwise a proper object of parochial relief.
3. A female, 73 years of age, held to be, *from old age alone*,* a proper object of parochial relief, and being supported by the voluntary gifts of a relation, incapable of acquiring a settlement by residence after that age.

The pauper, a native of Ireland, resided 13 years in the parish of Stoneykirk. She was 59 or 60 years of age when she first went there, and was not averred to have laboured under any infirmity. During the whole period of her residence in Stoneykirk she was supported by her son, who was domiciled in England.

She removed from Stoneykirk to the parish of Stranraer, when 73 years of age, though still free from bodily infirmity. She resided eight years in Stranraer, during which she was supported by her son, in the same manner as during her residence in Stoneykirk.

Her son died in the eighth year of her residence in Stranraer, and she thus became destitute. This was in 1838 or 1839.

She then removed to Leswalt parish, where she resided for upwards of five years, before applying for parochial relief; but during all that time she was supported by private charity.

In these circumstances, Leswalt was assoilzied by common assent.

* See No. 43, p. 296.

It was pleaded for Stoneykirk, that the *casus* by which the claimant first became a proper object of parochial relief was the death of her son, which was after she had resided seven years in Stranraer, and that she had thus acquired a settlement there.

The sheriff (Urquhart) decerned on appeal (18th August 1845), against Stoneykirk, with expenses to each of the other parishes, adding a note, the material parts of which are subjoined :

“*Note.*—The pursuer, when she came to reside in the parish of Stoneykirk, was only about 60 years of age or under ; and is not alleged to have been incapable, from bodily disease or infirmity, of earning her own subsistence at that time. Her residence, therefore, in that parish, at least during the first five or six years, must, according to the decisions quoted in the papers, be held to be industrial, as she was not a proper object of parochial relief, and did not in point of fact apply for relief during her residence in that parish. At the time of her removal into Stranraer, circumstances were changed. She was then 73 years of age, and had become, or was on the point of becoming, *from old age alone*, a proper object of parochial relief, having a legal right to claim it from the parish in which she had by that time acquired a settlement, if she had not been supported by the *voluntary* aid of her son.

“ It is not averred on the record, and the sheriff believes it to be incapable of proof, that, *by the law of England, the son of the pursuer was under a legal obligation to support his parent*. This being a question of foreign law ought to have been averred by the defenders *as a fact*, if they were prepared to prove it. But the sheriff believes it to be incorrect, and, at all events, it is not averred.

“ It is admitted that the pursuer's son was domiciled in England ; and it is not even stated that he was either born in Scotland, or had ever resided there. It is clear, therefore, that no obligation could attach to him from the law of Scotland. The measure of any legal obligation on him to support his parent, must be sought for in the law of England, to which only he was subject. The sheriff, therefore (in ab-

sence of any allegation to the contrary), must look upon the aid given by him to the pursuer as entirely voluntary; and that therefore the pursuer was in the situation of an aged and impotent person, subsisting upon voluntary charity ever since the first year of her residence in Stranraer."

4. *Mary Winsley v. John Herbertson, Inspector of Cummertrees (Dumfriesshire.)*

Revised by Sheriff-Substitute.

An unmarried female who was far advanced in pregnancy, though otherwise in good health, found entitled to relief, as one of the occasional poor, "until she shall be able to work for her own maintenance, and that of her child."*

This woman, who was unmarried, applied for relief in the ninth month of her pregnancy, on the ground that she was thereby disabled to labour for her subsistence, and that she required medical aid and attendance. She was refused relief by the inspector, who acknowledged her pregnancy, but averred that she was otherwise a stout healthy woman.

The sheriff-substitute (Trotter) pronounced the following judgment, 24th March 1846 :—

"Having resumed consideration of the process, with the inspector's statement, and pursuer's answers, repels the inspector's reasons for refusing the pursuer relief: ordains the inspector to grant relief to the pursuer until she shall be able to work for her own maintenance and that of her child; finds the inspector liable in expenses; appoints an account thereof to be given in; remits to the clerk of Court to tax the same and report, and decerns.

(Signed) "JOHN P. TROTTER.

"*Note.*—Under the former law, there was no provision by which the parochial funds could be appropriated to the relief of any poor, except such as were entitled from age or permanent disease to be placed upon the roll. Hence, under the former law, the application of a person labouring under

* See No. 31, p. 261.

temporary disease could not be entertained. By the recent statute, however, section 68, which provides that the funds raised for behoof of the poor shall extend and be applicable to the relief of occasional, as well as permanent, poor, this difficulty seems to be removed; and if a person, disabled by temporary illness from earning a livelihood, apply for relief, the inspector seems bound, under the statute, to extend such relief to the applicant, as one of the occasional poor. A woman, in the circumstances narrated in the petition, certainly seems to be a person temporarily disabled by illness from work, and as such she seems entitled to relief, until the temporary cause of her disability to work be removed."

(Initialed) "J. P. T."

The inspector appealed. The sheriff (Napier) adhered.

5. *M'Gregor v. Parishes of Little Dunkeld and Perth,*
(Perthshire.)

Revised by Sheriff-Substitute.

1. The settlement of a bastard whose mother was also a bastard, determined by that of its maternal grandmother, the mother having established no separate settlement for herself.
2. A minor, the child of a parish pauper, and not alleged to have had any separate means of maintenance, held not to have acquired a settlement by residence while living in family with the pauper.

M'Gregor, a stranger, raised an action against the parishes of Little Dunkeld and Perth, for relief of the aliment of a bastard which had been born in the parish of Perth. Its mother, Catherine Welling, also a bastard, was born in the parish of Little Dunkeld, where she resided with her mother, Ann Scott, till 1838, when she was 13 years of age. Ann Scott, the grandmother, had an undoubted settlement in the parish of Little Dunkeld, and had been admitted to the poor's roll of that parish. She removed in 1838 with her daughter, Catherine Welling, to Perth, where they resided till 1842, when Ann Scott died, and Catherine Welling very soon afterwards left Perth.

The sheriff-substitute (Barclay) on 1st July 1846, found

Little Dunkeld liable in relief, with expenses to the pursuer and the parish of Perth, and added the following note:—

“Independently of the New Poor-Law, the sheriff-substitute is of opinion that Catherine Welling did not acquire a settlement under the former law by the four years’ residence, whilst a minor residing with her mother and aunt, both paupers on the parish of Dunkeld.

“Birth of itself does not found a settlement if there be grounds for a settlement by subsequent residence. March 6, 1841—Parish of Lasswade.

(Initialed)* “H. B.”

This decision was affirmed by the sheriff (Whigham) on appeal.

6. *Mary and Daniel M’Cartney v. James Wallace, Inspector of Kirkcolme (Wigtownshire).*

Revised by Sheriff.

1. Circumstances in which an application to the sheriff having been improperly presented in name of an idiot, her father was allowed to sist himself as a pursuer, and action sustained at his instance, but no expenses allowed.
2. A man 70 years of age, and burdened with a wife and idiot daughter, who occupied a free house well-furnished, and had from a seaman’s fund and as a postmaster L.8 a-year, found to have a legal claim for parochial relief, though it was averred that he was proprietor of a house worth L.120; that the part of it which he did not himself require might be let for L.6 a-year; and that he had other children who were capable of contributing to his support,—reserving to the Poor’s Board, if so advised, to require a conveyance of any property of which he might be possessed, and reserving also their claims for relief against the other children.

Daniel M’Cartney presented a petition to the Poor’s Board of Kirkcolme, craving relief for his daughter Mary, an idiot. A deliverence was written upon it, refusing the application in the mean time.

An application against the inspector was then presented, through a law agent, to the sheriff, *in name of the idiot*.

The inspector took the preliminary plea, that the applica-

tion to the Poor's Board was by the father, not by the idiot, and that the complaint to the sheriff ought to have been so also. It was also objected that the idiot was incapable of pursuing.

The father thereupon gave in a minute craving leave to sist himself as a pursuer along with his daughter, which, in the particular circumstances of the case, and no objection being made by the opposite party, the sheriff-substitute (Macdonell) allowed. (15th April 1846.)

It was averred that the father (who was 70 years of age) lived, in a well-furnished house, in a style inconsistent with poverty; that the whole family resident with him was his wife and the idiot daughter—that he had the house rent-free—that part of it, which he did not require for his own use, might be let for L.6; that he had from a seaman's fund L.5, and as postmaster, L.3 a-year; and that he was strong, healthy, and able to do other work if he chose. It was also alleged that he, at the date of his application to the board, was proprietor of the house in which he lived, worth L.120; but that he had conveyed it away to his sons, within a few weeks before the application to the sheriff;—and that several of his other children were able to contribute to his support, and did so.

No proof was led, and the sheriff-substitute (Macdonell) pronounced the following judgment. (15th April 1846.)

“ Having considered the closed record and writings produced, Finds that the petitioner Daniel M'Cartney does not possess means more than are necessary to his own and his wife's support; and that the petitioner Mary M'Cartney, being a proper object of parochial relief, is entitled to be placed on the roll of paupers of the parish of Kirkcolm, and to parochial relief therefrom; appoints the said parochial board accordingly to meet *quamprimum*, and take the necessary steps for the accomplishment of the above finding, and decerns; finds the respondent liable in expenses, of which allows an account to be given in, and, when lodged, remits the same to the auditor to tax and report.

“ *Note.*—If the parochial board consider that they have

any good ground of ultimate relief against the pauper's father, it is of course open to them to make it effectual by a reduction of the alleged fraudulent alienation of his house or other-ways, but on their own shewing he is only possessed of an income of L.8 a-year and a free house, which is surely not more than adequate for the support of himself and his wife; and from his advanced age and former occupation, as well as from his present duties of postmaster, and with such a charge as the pauper appears to be, he cannot be expected to be able to earn much by his personal labour."

The inspector appealed, and the following decision was pronounced by the sheriff (Urquhart), 4th May 1846.

"The sheriff having considered the minute of appeal, and whole process, the sheriff-substitute, as advised by him, recalls the interlocutor appealed from; finds that the petitioner, Daniel M'Cartney, is under a legal obligation to aliment the other petitioner, Mary M'Cartney; finds therefore that the application, No. 8 of process, was properly addressed to the heritors and kirk-session of Kirkcolum by the said Daniel M'Cartney, in his own name; and in respect that the said Daniel M'Cartney has now sisted himself as a party pursuer in this action, repels the preliminary pleas stated for the respondent, and entertains the petition as at the instance of Daniel M'Cartney; finds in the whole facts and circumstances appearing on the record, and particularly in respect of the admission by the respondent, that the said petitioner is burdened with the maintenance of an idiot daughter, residing in his family, and whom he is bound to aliment, that the said Daniel M'Cartney is a poor person, having a legal claim to parochial relief; and directs the respondent, James Wallace, *quamprimum* to lay the application of the said Daniel M'Cartney before the parochial board of the parish of Kirkcolum, along with this finding, in order that the board may give effect to the same; and in the meantime ordains the said inspector to afford interim relief to the said Daniel M'Cartney until his application shall be disposed of by the parochial board, and decerns;—without prejudice to the said parochial board requiring from the said Daniel M'Cartney a disposition or assignation of any property of which he may

be possessed, in payment of, or security for, any relief which may be afforded to him, if the board shall be advised to demand it, and also without prejudice to any claim of relief which the parish or board may have against the sons of the said Daniel M'Cartney, or any other persons not parties to the present action : Finds no expenses due to either party.

“ *Note.*—The petition in this case was presented improperly in the name of the daughter. It appears to the sheriff, that it ought to have been presented by the father in his own name, as the party burdened with the support of the idiot, and in whose family she was living. This was the view taken of the case (correctly as the sheriff thinks) by the petitioner, Daniel M'Cartney, in his application to the kirk-session ; and as the merits of the case are fairly brought out in the record, the sheriff is unwilling to turn a case of this description out of Court on a point of form. But it is chiefly on account of the irregularity of the manner in which the case was originally brought into this Court, that the sheriff has found no expenses due.

“ The point at issue between the parties comes practically to a question of the adequacy of the income enjoyed by the petitioner for his sustenance ; but the sheriff feels that, under the terms of the 73d, taken in connection with the 74th, section of the statute, he is under the necessity of considering that question incidentally, as, so long as the parochial board refuse to place the applicant on the roll of paupers, he may not (under the 74th section) be able to bring his case under the review of the board of supervision.

“ Some questions are raised in the pleas in law for the respondent, which do not properly fall to be decided in the present summary proceedings.”

7. *C. D. v. Parish of Kinfauns (Perthshire).*

Revised by Sheriff-Substitute.

1. Opinion intimated, that when a woman marries, having an infant bastard by another man, its settlement, following hers, attaches through her to her husband's parish.

2. The aliment of a bastard, born by a woman to another man before her marriage, becomes a debt against her husband, on her marriage.
3. A bastard child, living with its mother and her husband, able-bodied persons,—who did not allege that they had taken any steps to compel its acknowledged father to contribute to its support, or that he was unable to do so,—held not a proper object of parochial relief.

A married woman applied to the inspector of Kinfauns for parochial relief on account of a bastard child, born, before marriage, to another man than her husband. She was refused; and, on applying to the sheriff, the inspector assigned as reasons of refusal—*1st*, The woman had a settlement in Kinfauns, but her husband has not; and it is his settlement which rules. *2d*, The mother is bound to support the child, and she is able, and has taken no steps against the father.

The sheriff-substitute pronounced the following judgment, which was affirmed by Sheriff Whigham on appeal.

“Perth, 14th Nov. 1845.—Having advised the application for relief, with the reasons of refusal thereof given in for the inspector of the poor for the parish of Kinfauns, and answers thereto, Finds it admitted that the applicant and her husband are aged about twenty-six years, with only one child other than that for which the application is made; and that the husband is employed as a salmon-fisher during the fishing season, and as a shoemaker during the remainder of the year: Finds it admitted that the father of the said illegitimate child is resident in Perth, and admits the paternity; and it is not alleged that he has been prosecuted, to compel him to contribute to the aliment of his said child, or that he is unable so to do: Therefore, finds it unnecessary to proceed farther with making up a record; and finds it unnecessary to give judgment on the question of settlement; but finds that the child cannot at present be held to fall within the classes entitled to parochial relief: Therefore, sustains the first and third reasons of refusal of relief, dismisses the application, and decerns.

(Signed) “HUGH BARCLAY.

“*Note.*—It is thought that the inspector is right as to

the question of settlement. A bastard follows the settlement of the mother; but the mother, on marriage, instantly loses her own settlement, and acquires that of her husband. It is, however, much more satisfactory to rest the grounds of decision on the other reasons.

“ The aliment of a child of the wife, born in bastardy to another man before marriage, very clearly becomes a debt against the husband in marriage. (27th May 1815; *Aitken v. Anderson* ?) The right of custody, after marriage, is another question, privative to the father to urge. There is also the claim of relief, to the extent of one-half, against the father, which in this case never has been attempted to be enforced. In the case of *Weepers*, 1844 (See p. 67), the judgment proceeded on the inability of the father, as tested by ultimate diligence. In the present case, it is impossible to say that the child is a pauper, because of the inability of its parents to give it the support it requires. If a pauper, most of the industrious peasantry of Scotland might affix a similar brand upon their offspring.

“ There appears a strong tendency, under the operation of the New Poor-Law, for mothers of illegitimate children to throw them on the parish, so that the father may be prosecuted criminally. But this important privilege must not be abused, and the mothers must be taught that the same power is directed against them, should they abandon their children unnecessarily.

(Initialed) “ H. B.”

8. *Alexander Junor v. Donald Maclellan, Inspector of Urray (Ross-shire.)*

Revised by Sheriff-Substitute.

1. Circumstances in which a letter alleged to have been granted by a pauper disclaiming his complaint to the sheriff, was disapproved of, and disregarded.
2. Held that a pauper, who had not been admitted to the poor's roll, was not debarred from complaining to the sheriff, by his having received small sums of interim relief.
3. Held that a man aged 77 must be presumed to be infirm, and incapable of supporting himself by his own labour; and an aver-

ment that he had been offered work and wages at 6d. a-day, not relevant to exclude his claim of relief

4. An inspector ordained by the sheriff to afford interim relief, "including therein a house or lodging, or adequate means to pay for one."

Alexander Junor, who is 77 years of age, applied to be put on the poor's-roll of Urray, but was refused. He, however, received from the inspector, at one time 2s. 6d., and at another 1s., of interim relief. He complained to the sheriff, by an application subscribed by himself.

The inspector produced a letter, attested by witnesses, purporting to be a disclamation by the complainer of the proceedings. The complainer himself, on being brought before the sheriff, adhered to his application.

The inspector averred, that the complainer had been offered work at 6d. a-day of wages; that he had recently made sales of stock, crop, and other effects belonging to him; and was not a fit object of parochial relief.

The following interlocutors were pronounced:—

"*Dingwall, 27th August 1846.*—The sheriff-substitute having considered this process, and seen and conversed with the petitioner, Finds it unnecessary to make up a record, or investigate this case farther: Finds that the petitioner, who is apparently, as he represents himself to be, of the age of about 77, has authorised and signed the application in his name to this court; that he has not disclaimed the same; but that, on the contrary, he now desires personally that it may be granted: Disapproves, therefore, of the production, by the inspector, of the letter of alleged disclamation: And, in respect it is not denied that the petitioner is destitute of a house to lodge in, and no reason or ground is stated, other than the said pretended disclamation, why relief should not be given to the petitioner, Finds him legally entitled to parochial relief: Ordains the inspector to afford him needful sustentation in terms of law, including therein a house or lodging to live in, or adequate means to provide one: Finds the inspector liable in costs; modifies the same to fifteen shillings, besides the dues of extract, and decerns.

(Signed) "GEO. CAMERON."

"*Dingwall*, 14th October 1846.—The sheriff-substitute having resumed consideration of this case, with the reclaiming petition for the inspector, and answers thereto, Finds, that the fact of the inspector having given to the petitioner two shillings and sixpence at one time, and one shilling at another, while it is not alleged that the petitioner has been admitted to the roll of paupers, forms no bar to the petitioner's insisting in this Court in his claim to parochial relief: Finds, that a man of the age of about 77, which the petitioner represents himself and appears to be, must be presumed to be infirm and incapable of supporting himself by his own labour, and, therefore, that the averment that the petitioner has been offered work and wages at the rate of sixpence a-day, is not relevant to exclude such claim: But, in respect it is set forth in the reclaiming petition for the inspector, that the petitioner has, since Whitsunday last, made sales of corn, cattle, and other effects belonging to him, and his right to relief is denied, allows the inspector—in the event of his paying 10s. 6d., within four days from this date, to the petitioner's agent, to indemnify the petitioner for the consequences of the inspector's failure to state, in his original paper, as required by the statute, the reasons why relief had been refused—to lodge, against the 23d day of October current, a condescendence of the facts which he avers and undertakes to prove, as to the petitioner's means of living, independently of aid from the poor's funds, and the petitioner to lodge answers thereto within one week thereafter: Reserves consideration of the matter of costs, *quoad ultra*: Ordains the inspector to afford the petitioner interim relief, including therein a house or lodging, or adequate means to pay for one, until a final judgment shall have been pronounced on the merits, and decerns accordingly: And with these variations, adheres to the interlocutor reclaimed against."

(Signed) "GEO. CAMERON.

"*Note*.—There is no room for doubt on the question raised as to the disclamation. A letter, not signed by the petitioner, cannot, although attested by witnesses, be put into competition with the formal petition, subscribed with his own

hand, and his subsequent verbal application to the sheriff-substitute.

“ As to the order to give the petitioner a house to lodge in, or adequate means to provide one, which the inspector says he will not obtemper, as being contrary to law, the inspector ought to recollect that man requires clothing and shelter as well as food. These three must, in common sense, be the elements which constitute ‘ needful sustentation ’ under the old law, and ‘ relief ’ under the new—and the terms of the statutes afford evidence of the soundness of this conclusion. The act 1579, cap. 74—the leading act establishing and regulating a compulsory assessment for the support of the poor—requires that ‘ the aged, impotent, and puir peopil, suld have ludging and abiding places throughout the realm, to settle themselves intil,’ and directs provision to be made, not only of what they will ‘ accept daylie and live unbeggand,’ but also, ‘ where their remaining shall be, be themselves, or in house with uthers, where the saides puir peopil may be best ludged and abide.’ The act of last year was passed to *amend*, not to *repeal*, the former statutes, and it is declared by it that they shall be in force, except in so far as they are at variance or inconsistent with its enactments. The great end of both laws was to make provision for the needful sustentation or relief of ‘ the impotent and puir peopil.’ Upon this point the one is consistent with the other, and the old is, therefore, not repealed by the new.

“ It is believed that the law is so understood and practically interpreted and administered throughout Scotland; and the inspector of Urray will do well to reconsider his resolution to disregard it, and not, by continued contumacy, to encounter the execution of a decree *ad factum præstandum*, or the exercise of the powers of the board of supervision.

(Initialed) “ G. C.”

“ *Dingwall*, 19th November 1846.—The sheriff-substitute having advised with the Sheriff,* who has considered this minute of appeal and whole previous proceedings, for the rea-

* John Jardine, Esq., a member of the board of supervision.

sons stated in the note subjoined to the interlocutor of the 14th of October, and as, by that interlocutor, the appellant is allowed an opportunity of establishing the facts upon which he opposes the present application, dismisses this appeal.

(Signed) "GEO. CAMERON."

While the case was under appeal, the parochial board had resolved to withdraw their opposition to the claim,—to place the applicant on the roll of paupers,—and to provide him with a dwelling-house,—paying the costs of the discussion in the sheriff-court.

9. *A. B. v. C. D. (Perthshire.)*

Revised by Sheriff-Substitute.

Held, that in an assessment *levied on heritage*, a manse and glebe are subject to assessment.

1846. In the small-debt court at Blairgowrie, a clergyman was prosecuted for assessment on his manse and glebe. It was resisted because of the decision in the case of Cargill.*

It was answered, that the case of Cargill was considered always a doubtful decision. But, moreover, it was applicable to an assessment on means and substance, not on heritage. The present law sets aside all previous exemptions, and expressly includes ministers, in respect of their stipends. The assessment being on heritage, the manse and glebe are heritage, and the minister is held the owner, and as such has been admitted as a parliamentary voter. By the first section of the Act it is declared that the word "owner" shall apply to liferenters as well as fiars, and to every person who shall be in the actual receipt of the rents and profits of lands and heritages.

The sheriff-substitute (Barclay), after adjourning the case, and consulting the sheriff (Whigham), found the assessment good, and decerned.

* Cargill, February 29, 1816, Fac. Coll. See p. 69, No. 86.

10. *Robert Stewart v. John M'Lennan, Inspector of Annan (Dumfriesshire).*

Revised by Sheriff-Substitute.

1. Where a pauper resides in a parish different from that of his settlement, it is competent, under the New Act, to apply for relief to either; and, on refusal to bring his case before the sheriff, against the parish by which relief is refused.
2. A man, 23 years of age, who had lost a leg, but otherwise in good health, and who had refused work offered by the inspector, held not a proper object of parochial relief.

Robert Stewart, resident in the parish of Cummertrees, but whose settlement was admitted to be in Annan, had lost a leg by amputation. He applied to the inspector of Annan for relief. The inspector gave him interim relief, and caused him to be examined by medical men, who reported that his general health was good. The amputation had taken place six years before. The inspector, thereupon, applied to the road-surveyor, who agreed to give him work at breaking stones, at 2s. per cubic yard. This was intimated by the inspector to Stewart, and a supply of hammers at the same time offered. Stewart refused the employment, and the board thereupon rejected his application for relief. He then complained to the sheriff.

The inspector pleaded—1st, The application is incompetent, in respect that, under the new Act, it should have been addressed to the parish of the applicant's residence, not to that of his settlement (section 70); 2d, The applicant is not a proper object of parochial relief.

The sheriff-substitute (Trotter) repelled the first of these pleas (17th Feb. 1846), with the following note:—

“ The 70th clause of the statute enacts, That if a pauper apply to the parish of his residence, not being the parish of his settlement, the inspector of such parish shall make him an interim allowance, with relief against the parish of his settlement. This clause, however, does not make it imperative on the pauper to apply to the parish of his residence. He certainly may do so under the clause, but his right of re-

lief against the parish of his settlement remains entire, and there is nothing in the statute which precludes him from making good such right, by action against the parish of his settlement, direct. With regard to the application of a pauper to this court, the 73d clause enacts that, where relief on application has been refused by any parish, it shall be lawful for him to apply to the sheriff, and this clause by no means limits his right of application to cases where he has been refused by the parish of *residence*. The words are, 'That if relief shall be refused to any poor person who shall *have made application for relief*,' he shall be entitled to apply to the sheriff; and where a party has been refused by the parish of settlement, he is certainly, under the clause, as much entitled to apply to the sheriff, as if he had been refused by the parish of his residence.

(Initialed) "J. P. T."

Affirmed on appeal by Sheriff Napier, 20th April 1846.

The record was then closed, and the sheriff-substitute, on advising the case on the merits (19th May 1846), found that the pursuer is not a proper object of parochial relief, being able to work for his own subsistence, assoilzied the defender, and found the pursuer liable in expenses,—adding the following note:—

"From the medical report it appears that the pursuer's health is good, and that he is able to work for his own maintenance. The loss of a leg by no means renders a man an object of parochial relief, as there are many occupations at which he may find employment. The conduct of the parish in voluntarily giving the pursuer an interim allowance, in finding work for him, and in providing him with tools, was liberal; and if the pursuer declined to work, the fault was his own. It is quite clear that the parish cannot be called upon to aliment a man,—who is not only able to work, but for whom work is provided,—merely because he is unwilling to work.

(Initialed) "J. P. T."

The decision was acquiesced in.

11. *William Craig v. the Parish of St Martins (Perthshire).**Revised by Sheriff-Substitute.*

A person who was regularly in receipt of parochial relief for an inmate and member of his family, having subsequently applied for an allowance to himself, which was refused, held that the sheriff's jurisdiction was excluded; and that the proper course was to apply for an increased allowance, and, if necessary, appeal to the board of supervision.*

William Craig, who had already an allowance from the parish, applied for an allowance for himself, on the ground that the former allowance was given solely on account of his wife, who was old and infirm, and that he had now come to be in a similar state. On refusal, he complained to the sheriff.

The poor's board objected to the jurisdiction of the sheriff, that the applicant, being already on the poor's roll, could not pursue for an additional allowance until the board of supervision should have previously decided that there was a just cause of action. (Sect. 75, New Act.)

The sheriff-substitute (Barclay) pronounced the following interlocutor:—

“Perth, February 13, 1846.—Having advised the process, Finds it unnecessary to prepare or close a record, there being sufficient in the proceedings to decide the application: Finds it admitted that the applicant is in receipt of parochial relief: and finds that, though it is alleged by him that the allowance so made is solely in respect of his wife, nevertheless, as it appears she resides in family with the applicant, so that he may and must benefit thereby, it is not competent to the sheriff to interfere with the rate of allowance so given, on the ground that the same was given solely on account of the wife, and that an increased or separate allowance must now be given on account of the husband. Dismisses the application, reserving to the applicant his proper remedy as accords: Finds the applicant liable in expenses, of which, &c.

(Signed) “HUGH BARCLAY.

* See No. 28, p. 255, and No. 14, p. 234.

“ *Note.*—If the applicant were entitled to require the sheriff to ordain the parochial board to give a further allowance in respect of his own claim, it would be equally competent for the Sheriff to order every individual member of a family to be separately allowed for, which would be an indirect mode of reviewing the amount of aliment allowed for the whole or any one of their number—a power which has been anxiously withheld from the sheriff. The applicant, as husband, is legally bound to aliment his wife; and if he obtains an allowance for his wife, it is an acknowledgment of his inability for the duty. The allowance is to him as the head of the house, and not to the wife, whatever may be the grounds on which the same has been given and fixed. Had the spouses been living in a state of separation, the rule might have been otherwise.
(Initialed) “H. B.”

The applicant appealed. The sheriff (Whigham) pronounced the following judgment:—

“ *Perth, March 13, 1846.*—Having advised with the sheriff, who considered the whole process, affirms the judgment on the merits, but recalls the finding of expenses, and finds no expenses due, and decerns.

(Signed) “ROBERT WHIGHAM.

“ *Note.*—The judgment is right on the merits. The applicant stands on the parochial roll of the poor of St Martins, and that single fact excludes *the jurisdiction* of this court in the matter. As regards its jurisdiction, it is immaterial whether the relief is allowed for the claimant himself, or for his wife or child, *for whose maintenance he is liable*; and if the claimant himself has also become a proper object of relief, his course is to apply to the parochial board for an *increased* allowance, and if wrongfully refused by the parochial board, the board of supervision will set the matter right. As the case is new, and there seems to have been some misapprehension, the sheriff has recalled the decerniture for expenses.

(Initialed) “R. W.”

12. *Widow Margaret Mackenzie v. Inspector of Killearnan,
(Ross-shire.)*

Revised by Sheriff-Substitute.

Procedure where the Sheriff's order for interim relief is disobeyed,
or the interim relief given is elusory.*

In this case the sheriff had ordered the inspector to afford interim relief to the applicant, who was the mother of three infant children. Her name had been inserted on the poor's roll for an allowance of one shilling a quarter. The inspector maintained that this excluded the sheriff's jurisdiction, and intimated his resolution to disobey the order for interim relief. The applicant's agent thereupon moved the sheriff to commit the inspector to prison for contumacy; and the sheriff issued an order on the inspector to attend for judicial examination. The inspector attended, and the sheriff-substitute (Cameron) then pronounced the following interlocutor:—

“ *Dingwall, 22d December 1846.*—The sheriff-substitute having resumed consideration of this case, with the answers for the petitioner, and the judicial declaration of the inspector, Finds, that upon the 3d day of December current, the inspector was ordered to afford relief to the petitioner until the statement of the reasons why relief had been refused should be lodged, and that, upon the 10th, after the statement had been put in and considered, the interim support was ordered to be continued: Finds it admitted by the inspector, that this last order has not been obtempered, and that he refuses to obtemper it, because, as he states, the petitioner has been entered upon the roll of paupers at the rate of a shilling a quarter, or nearly a penny a week, and that the parochial board hold the jurisdiction of the sheriff to be in consequence excluded: Finds, assuming this statement to be true, that the said allowance is not relief in the sense and meaning of the statute: Finds, that the power of judging of the question of interim support is conferred by the new law upon, and belongs to, the sheriff alone; and that, al-

* See No. 15, p. 236.

though the statute provides that nothing therein contained shall be construed to enable the sheriff to adjudicate upon the adequacy of the relief which may be afforded, this provision must be held to contemplate and refer to the real *bona fide* relief variously expressed in the statute, by the term 'interim relief,' 'interim support,' 'the necessary means of support,' 'interim maintenance,' and not to an allowance which is palpably elusory: But finds that, even if the jurisdiction of the sheriff were doubtful, it was the duty of the inspector to obey the renewed order for relief until a final judgment should be pronounced in the cause, it being obviously necessary, from the very nature and purpose of such orders, that they be promptly obeyed and acted upon; for, if it were permitted to challenge the grounds upon which they are issued, the applicants for relief might starve in the course of the discussion: Finds, therefore, that the avowed and continued refusal of the inspector to obtemper the said order, and to afford relief to the petitioner pending the process, is a manifest disregard of the authority of the law, and a contempt of this court; but in respect the inspector has now declared at the bar his regret for this course of proceeding upon his part, and paid over in open court to the petitioner's agent, for her behoof, the sum of five shillings as interim support, dispenses, in these circumstances, with the infliction of any punishment.

(Signed) "GEO. CAMERON."

13. *Watt, Inspector of Stranraer, v. Inspectors of Leswalt, Old Luce, and Inch, (Wigtownshire.)*

Revised by Sheriff.

Opinion intimated,—1st, That where a settlement has been acquired by residence, liberating the parish of birth, and has been subsequently lost, without any new settlement by residence being established, the settlement of birth thereupon revives.

2d, That, under the New Act, continuous non-residence for five years liberates the parish in which a settlement had been previously acquired by residence, if the applicant had not become a proper object of parochial relief prior to the passing of the Act.

This case originated in an action, at the instance of Stranraer against Leswalt and Old Luce, for relief of the aliment

of Peter M'Harg, and to have it determined which was the parish of M'Harg's settlement.

It appeared that M'Harg was born in the parish of Inch, and that he afterwards resided and carried on business in the parish of Old Luce for 20 years, so as confessedly to have acquired an industrial settlement in that parish.

It was averred by Stranraer and Old Luce, that he subsequently resided in Leswalt parish, earning his livelihood from 26th May 1840 to 26th May 1843. Leswalt alleged, on the other hand, that his residence there was "a few days short of three years." It was not disputed that he supported himself while in that parish.

He removed from Leswalt to Stranraer at Whitsunday 1843, and resided there till February 1846, the date of his application for relief.

Parties were not agreed as to the date at which he first became a proper object of parochial relief, except that it was admitted on all sides that he was not so when he came to Stranraer. It was not averred that he had acquired a settlement in Stranraer; and the question came to be, which of the other parishes was liable.

Leswalt, averring that he had not become an object of parochial relief until 16th February 1846, the date of his application for relief, which was after the passing of the New Poor-Law Act, maintained that a five years' residence was necessary to create a settlement in this case, in terms of sec. 76 of the Act. That parish relied also on the alleged shortcoming of a few days less than the three years, in the pauper's residence there.

Old Luce maintained, under the same section, 1st, That the pauper had lost his settlement in Old Luce by reason of continuous *non-residence for five years*, unless it could be shewn that he had become a proper object of parochial relief prior to the passing of the New Act (4th Aug. 1845); and, 2d, That if it should be shewn that he had become a proper object of parochial relief prior to the passing of said Act, then Old Luce would be released by the pauper having acquired a settlement in Leswalt, by virtue of a residence of three years after he left Old Luce.

On considering these pleas, the sheriff-substitute (Macdonell) sisted process (2d July 1846), to allow the pursuer an opportunity of calling Inch, the parish of birth, by a supplementary action. This having been done, and the actions conjoined,—

Inch averred that the pauper had become a proper object of parochial relief prior to the passing of the New Act (4th Aug. 1845), and therefore maintained—

1st, That a three years' residence established a claim against Leswalt.

2d, That, failing Leswalt, Old Luce was not released. And,

3d, That, in any event, where a pauper has once acquired a settlement by residence in another parish, he has no recourse against the parish of birth, which is thereby completely liberated.

The sheriff-substitute (Macdonell) issued the following interlocutor and note :—

“ *Wigtown, 24th Nov. 1846.*—Having considered the closed record in the conjoined processes,—With reference to the subjoined note, allows the pursuer a proof, in conjunction with the parishes of Old Luce and Inch, of the averments that the pauper, Peter M'Harg, had acquired a settlement, by a three years' industrial residence, in the parish of Leswalt, and was a proper object of parochial relief, previous to the passing of the Poor-Law Act : Allows to the said parish of Leswalt, also in conjunction with the parishes of Inch and Glenluce (Old Luce), to such extent as the two last-named parishes may be advised to avail themselves thereof, a conjunct probation thereanent : Grants warrant for letters of incident diligence against witnesses, and havers, and commission, &c.

(Signed “ A. MACDONELL.

“ *Note.*—If it can be instructed that the pauper had a *three years' industrial residence in Leswalt*, and was a proper object of parochial relief previous to the passing of the Poor-Law Act (4th Aug. 1845), Leswalt, under section 76 of the Act, must be liable.

"Old Luce has an interest in making out these two allegations jointly; but not the latter without the former; for if the latter be instructed and the former not, then Old Luce would seem to be the parish liable.

"Inch, too, has an interest, for if neither of the above points be instructed, then Inch must be liable, as the parish of the pauper's birth; the claim on Old Luce being lost by reason of a continuous non-residence for five years, unless it be proved that the pauper was a proper object of parochial relief prior to the passing of the Act."

Adhered to by Sheriff Urquhart, on appeal (19th Jan. 1847).

On a proof it was established that M'Harg had become a proper object of relief prior to the passing of the New Act, and had resided for three years in Leswalt, maintaining himself, after he left Old Luce. On advising the proof, the sheriff-substitute, and subsequently the sheriff, accordingly discerned against Leswalt, with expenses to each of the other parishes.

14. *John Smith v. Parish of Leswalt (Wigtownshire.)*

Although the head of a family be able to work and to support himself, if any inmate of his family, whom he is legally bound to support, be disabled, and the earnings of the household as a whole be not sufficient for its support, they are to be regarded as proper objects of relief, and the head of the house may competently complain to the sheriff, if his application for relief has been refused.*

John Smith, labourer, Leswalt, presented a petition to the sheriff of Wigtownshire, stating that his wife, Sarah Ross or Smith, is upwards of 57 years of age, that she suffers from rheumatism, which has deformed her hands, and rendered her unable to earn a livelihood; that he is upwards of 67, and cannot earn enough to support his wife, though able to support himself. In these circumstances, he complained that relief had been refused by the parish of Leswalt, in which he and his wife had resided continuously for three years prior

* See No. 11, p. 228, and No. 28, p. 255.

to the passing of the New Poor-Law Act (Aug. 1845), having come to the parish on 26th May 1842.

Their residence in Leswalt for more than three years prior to the passing of the Act was admitted by the parish, which averred, however, that their circumstances had undergone no change during their residence there, and that if fit objects of relief now, they had been so from the first.

It was averred by the claimant that his wife had applied for and received relief from the parish soon after the completion of their three years residence, but had been struck off the roll of paupers on the passing of the New Act. Leswalt admitted that application, and stated its date to have been on 26th May 1845, the day on which the three years' residence expired. Leswalt also admitted that temporary relief had been given, but alleged that this was in the month of September, after the new Act had passed. It was likewise admitted that the temporary relief was withdrawn in December 1845.

Leswalt contended, 1st, That as the husband is confessedly "able to work," the application is incompetent. 2d, That they had not become proper objects of parochial relief prior to the passing of the Poor-Law Act, and that a five years' industrial residence thus became necessary to establish a settlement.

The sheriff-substitute (Macdonell) pronounced the following interlocutor and note:—

"*Wigtown, 8th December 1846.*—Having considered the closed record, Finds it sufficiently admitted that the petitioner's wife is unable to earn her own maintenance. Before farther answer allows the petitioner a proof that before the Poor-Law Act came into operation, he was an object of parochial relief, and that he still is unable to earn a sufficient maintenance for himself *and his wife*; and to the respondent a conjunct probation; Grants warrant for letters of incident diligence against witnesses and havers, and commission, &c.

(Signed) "A. MACDONELL."

Note.—Of course the petitioner's wife, however helpless, has no claim to parochial aid if her husband is able to support her; and being a married woman, her rights depend on those of her husband. It appears, from the statement

given, that the petitioner and his wife came to reside in the parish of Leswalt at Whitsunday 1842; consequently any settlement that they may have acquired in that parish must be in virtue of a three years' industrial residence prior to the passing of the Poor-Law Act. But in order to afford them this right of settlement, the residence must be coupled with the fact, that previous to the passing of the act, the petitioner was an object of parochial relief."

"To have rendered him an object of relief, it is not necessary that he was, or is, unable to earn a subsistence *for himself alone*. If he was and is unable to earn a subsistence for his impotent wife also, he will fall within that class of persons; and it is to have this matter cleared up that the above proof is allowed."

Adhered to by the sheriff (Urquhart) on appeal, February 2, 1847.

15. *Mary Mackenzie v. George Gillanders, Inspector of Urquhart (Ross-shire.)*

Revised by Sheriff-Substitute.

Interim relief, when ordered by the sheriff, must be substantial, not evasive.*

The circumstances of this case appear from the interlocutors, which are subjoined:—

"*Dingwall, 9th Jan. 1847.*—The sheriff-substitute having considered this case, Finds that, upon the tenth day of September last, when the application of the petitioner to this court was presented and entertained, the inspector was ordered, in common form, to give in his statement of reasons, and to afford the petitioner interim relief: Finds that, upon the 29th day of September, after the statement had been lodged and considered, the interim relief was ordered to be continued: Finds that, upon the 20th day of November, the

* The board of supervision has expressed, through its secretary, its disapproval of attempts to exclude the sheriff's jurisdiction by the payment of nominal allowances to paupers, and directed real support to be afforded.—See No. 12, p. 230.

inspector transmitted to the petitioner, by post, one shilling in a letter, in which he states,—‘ I find the sheriff has ordered interim relief to be given to you, and, in obedience to his order, I now inclose one shilling :’ Finds it not alleged that the inspector had previously, or that he has since, given any thing to the petitioner : Finds that this professed implement of the order for interim relief is practically and in effect an evasion of it, and a manifest violation of the inspector’s duty ; and ordains him to afford the petitioner interim support from and after the said 29th day of September, until a final judgment on the merits. *Quoad ultra*, in respect the inspector declines to close the record, and moves for leave to condescend, allows him to lodge, within one week, a condescendence of the facts which he avers and offers to prove, and the petitioner to lodge answers thereto within a week thereafter.

(Signed) “ GEO. CAMERON.”

The inspector having appealed, the following interlocutor was pronounced :—

“ *Dingwall*, 3d February 1847.—The sheriff-substitute having advised with the sheriff, who has considered this minute of appeal and former proceedings, and who is clearly of opinion that the letter of the inspector, of the 20th November last, when taken in connection with the fact, to be inferred from his minute of the 15th December, that no farther sum has been given for the petitioner’s interim support, is substantially an evasion of the order of court of the 10th September last,—dismisses this appeal.

(Signed) “ GEO. CAMERON.”

16. *Parish of St Cuthbert v. City Parish.*—*William Kidd.*—(*Edinburgh.*)

Revised by Mr Dunlop.

Circumstances in which a temporary absence was held insufficient to interrupt the acquirement of a settlement by residence.

William Kidd, born in 1817, was lawful son of Colin

Kidd, who resided in the city of Edinburgh till Whitsunday 1840, when he removed to St Cuthbert's parish, where he still resides. William lived in family with his father, and accompanied him to his new residence in St Cuthbert's, where he continued to reside with him as before. In the summer of 1841, being a journeyman butcher by trade, he was employed by a flesher in Tranent, on an engagement from week to week. He left his Sunday clothing at his father's house, which he occasionally visited—his clothes were always washed there—and during an illness of about a month's duration, he came home to his father's. With this exception he continued at Tranent, living in his master's house, till September or October of the same year. He then returned to his father's house, and lived there till February 1844 (more than three years after his father and his family first went to reside in St Cuthbert's, but less than three years after William's final return from Tranent), when in consequence of an attack of typhus fever, terminating in permanent paralysis, he became wholly disabled from supporting himself and family. He had been married on 22d November 1841. Having applied to the parish of St Cuthbert's, he obtained relief for himself and family in May 1844, and that parish now claimed to be relieved of the burden by the City parish, on the ground that in consequence of the interruption of his residence in St Cuthbert's by his engagement at Tranent, he had not acquired a settlement there, never having been full three years continuously resident there, before he became an object of parochial relief.

The parties differing as to the nature of the engagement and residence at Tranent, the arbiter (Mr Dunlop) allowed a proof, by the following interlocutor:—

“*June 3, 1846.*—Before further answer, allows the respondents a proof of their averments as to the character of William Kidd's engagement and residence at Tranent, as contained in article third of their revised statement of facts; and to the claimants a counter-proof.

“*Note.*—The arbiter, by allowing this proof before answer, does not mean to prejudice, in any way, the question whether the interruption of residence, whatever the nature of the en-

gement was, prevented the acquisition of a settlement in St Cuthbert's."

On advising the proof, which established the facts as above detailed, the arbiter pronounced the following judgment :—

" *July 3, 1846.*—The arbiter finds that William Kidd's settlement is in the parish of St Cuthbert, and repels the claim of the parochial board of that parish.

" *Note.*—Although, in order to acquire a settlement by residence, the residence must extend over three full years, it is not necessary that it should be *constant*. If, indeed, residence in a parish, extending over more than three years, be interrupted by such a taking up of residence elsewhere, as plainly implies a purpose of breaking off from that parish, there might be ground for contending, that, notwithstanding a return after a short absence, a new course of residence must be held to begin to run, so that the prior residence shall not be taken into view in determining whether a settlement have been acquired. But whatever might be thought of such a case, the present is clearly different. There is no ground for inferring any purpose, on the part of William Kidd, of breaking off from St Cuthbert's, and fixing himself at Tranent. On the contrary, his engagement at Tranent was precarious, and scarcely lasted more than four months, and he had no house there, merely living with his master ; while he always maintained a certain tie to his father's house, where he left his Sunday clothes, where all his clothes were regularly washed, and where he occasionally visited, and came for a month, as to his home, when taken ill. Such an absence could not, in the arbiter's opinion, so interrupt the course of residence from Whitsunday 1840, to February 1844, as to prevent him from thereby acquiring a settlement in St Cuthbert's."

17. *City Parish of Edinburgh v. Parish of St Cuthbert.—
Isabella Tran and Child.—(Edinburgh).*

Revised by Mr Dunlop.

A mother having acquired a settlement by residence after her husband's death, found to have thereby acquired the same settlement for an adult daughter, who, by reason of fatuity, necessarily remained a member of her family, unemancipated.

Isabella Tran, 21 years of age, but imbecile from birth, was a lawful child. Her father, Alexander Tran, had a settlement in the City parish at his death. His widow removed, after his death, with her imbecile daughter, into the parish of St Cuthbert, and acquired a settlement there by industrial residence, after which she claimed relief, and her daughter had an illegitimate child.

The parish of St Cuthbert maintained Isabella and her child, but claimed relief from the City parish, contending that Isabella could not acquire a settlement through her mother's residence, and must still retain the settlement acquired *derivativè* through her father. The City parish, again, on the authority of the recent case of Crieff against ** Foulis Wester, &c.*, maintained that a derivative settlement may be acquired through the mother.

The arbiter, Mr Dunlop, pronounced the following judgment:—

“*May 18, 1846.*—In respect of the admission by the claimants that the mother of Isabella Tran did, after the death of Alexander Tran, reside for more than three years in the parish of St Cuthbert, maintaining herself and daughter by her own industry, the arbiter finds that thereby a settlement was acquired in that parish to Isabella Tran, who by reason of fatuity necessarily remained a member of the family unemancipated; and that the burden of supporting her and her illegitimate child lies upon the parochial board of St Cuthbert; therefore rejects the claim of the said parochial board, and decerns.”

** Crieff v. Foulis, &c.*, 19th July 1842. See p. 65, No. 69.

18. *Inspector of Edinburgh v. James Garret (Edinburgh).*

Where a man was prosecuted on a charge of deserting his wife, and denied the marriage, a proof of the marriage allowed by the Sheriff, to expiscate his jurisdiction; and the marriage having been proved by witnesses, the accused was convicted.

James Garret was charged before the sheriff of Edinburgh, under the Poor-Law Act, 8 and 9 Vict., cap. 83, sect. 80, with having deserted his wife. The usual warrant to apprehend was granted; and the accused having been brought before the sheriff, rested his defence on a denial of the marriage; upon which a proof of the marriage was allowed. Sixteen witnesses were examined. The sheriff found the marriage proved, and sentenced the prisoner to pay a fine of L.10 to the parochial board; failing which, to suffer thirty days' imprisonment.

19. *Thomas Hardie v. Parish of St Cuthbert.—*
(Edinburgh).

A father, 76 years of age, found entitled to parochial relief, though it was admitted that he had a son, an inmate of his family, who earned 11s. per week, the son being burdened with the support of his mother, aged 70.

Hardie, a person 76 years of age, was refused relief by the parish, "on the ground that his son, living with him, was able to afford all the support necessary for the subsistence of the applicant."

Hardie denied his son's ability to support him, the son being burdened with the support of his mother, who is 70 years of age. The son's average earnings, while employed, were admitted to be about 11s. per week.

Pending the discussion, the applicant was placed by the poor's board on the roll of paupers.

The sheriff-substitute (Tait), without proof, on 16th October 1846, found the applicant a proper object of relief, and found the parish liable in expenses.

20. *John Thomson v. William Kerr, Inspector of Liberton (Edinburgh).*

Where it was averred that a pauper had children, resident in his immediate neighbourhood, whose circumstances enabled them to support him, he was found entitled to parochial relief, "until aliment shall be procured for him elsewhere," on condition of his assigning to the parish, at its expense, any claim which he might have against his children.

The applicant is 71 years of age. Relief was refused by the parochial board, on the ground that the pauper had lawful children, resident in his immediate neighbourhood, whose circumstances enabled them to support him. One of them, an unmarried son, lived with him, who though alleged to be "of weak mind," was admitted to earn 6s. per week, on an average, during the whole year. It was contended, on the other hand, that the parish is bound to afford needful sustentation, in the first instance, reserving their relief against the children. It was also denied that the children were able to support their parent. No proof was led.

The parties were heard by minutes of debate, on advising which, the sheriff-substitute (Tait), on 14th August 1846,

"Finds it not disputed that the applicant is unable to maintain himself, and would be entitled to parochial relief, were it not for the alleged ability of his children to support him, and their legal obligation to do so: Finds that, in the circumstances, the inspector is bound to allow to the applicant needful sustentation, either permanently, or, at least, temporarily, and until aliment for him shall be procured elsewhere, subject to the condition of the applicant assigning to the inspector any claim which he may have against his children, upon the inspector requiring him to do so, and defraying the expense; and, therefore, ordains the inspector to afford needful sustentation to the applicant, and to put him on the roll of paupers to that effect, accordingly; finds the inspector liable in expenses," &c.

On appeal, the sheriff (Speirs), on 9th September 1846, dismissed the appeal, adding the following note:

"*Note.*—It is not denied that the pursuer is a proper ob-

ject of parochial relief, in respect of his age and poverty ; but such relief is refused upon the ground that the pursuer has children who are bound to support him. It is not alleged that they are willing to support him, and therefore the only question is, whether, in these circumstances, the parish be not primarily liable to afford the necessary relief, until the question of ultimate liability can be determined. If the parish be not liable, the alternative is, that the pauper is exposed to the risk of starvation ; for his children cannot be ordered summarily to relieve him."

21. *Inspector of Edinburgh v. Inspector of St Cuthbert.—Grace Henderson or Meek.—(Edinburgh).*

Revised by Mr Dunlop.

A person advanced in life, but contributing, in some considerable degree, by her own work, to her support, held capable of acquiring a settlement, by residence, while receiving aid from her lawful children, they being bound in law to maintain her.

Grace Henderson or Meek, aged 70, was the widow of Thomas Meek, who died a pauper in St Cuthbert's workhouse, on 6th February 1838. He had resided in St Cuthbert's parish for about twenty years prior to his death, and his wife had thus a settlement in that parish when he died.

Mrs Meek, who lived in the City parish, separately from him, for seven years before his death, thereafter continued to reside there. She lived in the City parish continuously for more than three years after her husband's death, during part of which time she resided in family with her son, assisting in his household affairs ; and during the remainder of that time she occupied a room of her own.

It appeared that during that period, though in good health, with the exception of two attacks of fever, yet, from want of strength, she was not fully able to earn a livelihood by her own work. She employed herself in sewing—was very industrious, and managed to live, assisted by her lawful children. She had applied in January 1839 to the City workhouse for relief, but was refused.

She was admitted to parochial aid in October 1841 from the City, which claimed to be relieved by St Cuthbert's parish, on the ground that it was the parish of her husband's settlement, and that she was incapable of acquiring a settlement in the city by her residence after his death.

The arbiter (Mr Dunlop) found (24th April 1846) that by her residence within the city for more than three years after her husband's death, she acquired a settlement there.

"*Note.*—This is a narrow case, but on the whole the arbiter is satisfied that the circumstances under which Mrs Meek lived in the city, from the date of her husband's death in February 1838, till her application to the City workhouse in October 1841, were not such as to deprive her of the privilege and capacity of acquiring a settlement by residence. It is no doubt true that she did not, in point of fact, however industrious, earn sufficient to support herself without other aid; but the only aid she received was from her own children, who were bound, if able, to maintain her. By means of her own earnings, assisted by them, she did actually subsist without becoming an object of charity; and the policy of the law being to encourage the honourable spirit of independence manifested so creditably by both Mrs Meek and her children, the arbiter cannot hold that, while contributing in some considerable measure by her work to her own support, she should be sunk into the position, and exposed to the disabilities of a pauper, while the deficiency in her earnings was supplied by those legally bound to maintain her."

22. *City Parish v. St Cuthbert.*—*Isabella Lillico.*—
(*Edinburgh.*)

Revised by Mr Dunlop.

Rates having been levied in error by a parish over a territory which was ultimately found to be beyond its bounds,—no ground for permanently burdening it with the paupers living in that territory.

Isabella Lillico had resided for greatly more than three years in the City parish prior to 1833, when she took up

her residence in Leith Terrace, then supposed to be in St Cuthbert's, and lived there for three years and three months, supporting herself by her own industry. Thereafter she lived chiefly in the City parish, but under circumstances, as alleged by that parish, in which she could not have acquired a settlement there of new, supposing her to have lost it by her residence in Leith Terrace. The averments on this head were disputed by St Cuthbert's parish, against whom the City parish brought a claim of relief, having supported Isabella Lillico since 1840.

By a decree of the Court of Session, it was subsequently fixed that Leith Terrace is within the City, and the claimants admitted that the part of it where the pauper lived is included in what must now be held to be within the royalty; but they contended that as it was supposed to be in St Cuthbert's when she lived there, and as St Cuthbert's had not admitted the City's claim for repetition of the rates levied from Leith Terrace by St Cuthbert's, that parish was bound to relieve them. The claim for the rates themselves was not before the referee.

The arbiter (Mr Dunlop) pronounced the following judgment:—

“*July 7, 1846.*—The arbiter, in respect it is admitted by the claimants that Leith Terrace, where Isabella Lillico resided from 1833 to 1836, is now fixed to be within the City of Edinburgh, Finds it unnecessary to inquire into the disputed allegations regarding her subsequent residence: and finds that her settlement is in the City parish, and repels the claim in so far as regards her future maintenance. He further repels, but only *in hoc statu*, the claim for repetition for past advances, reserving to the claimants to insist again therein in the event of its being found that the respondents are not bound to account to them for the rates levied from Leith Terrace, and to the respondents their defences against such claim.

“*Note.*—The uncertainty or error as to the situation of Leith Terrace, whether in Edinburgh or St Cuthbert's, may possibly afford sufficient ground for, on the one hand, leaving in the hands of St Cuthbert's parochial board the rates

levied prior to the decision of the question ; and, on the other, subjecting them, as the parties drawing these rates, to the burden of defraying, *during the same period*, the expense of supporting such paupers as belonged to the disputed territory ; but it can afford no ground whatever for laying, *in time to come*, the burden of a pauper who had resided there the requisite time to gain a settlement, upon the parish of which it has been found *not* to form a part, instead of upon that of which it *does* form a part, and the parochial board of which now draw the rates from it. The question of accounting, however, is not before the arbiter, and he has, therefore, reserved to the City parish to renew their claim so far as regards *past* advances, in the event of their not recovering the rates drawn by St Cuthbert's from the territory in question."

23. *Parish of St Cuthbert v. City Parish of Edinburgh.*
—*Widow Rosanna Pozzoli or Metaxa.*—(*Edinburgh.*)

Revised by Mr Dunlop.

A child, born in Scotland (whose parents never had any settlement in Scotland), having been maintained by a parish with which it had no connection, that parish is entitled to relief from the parish of birth.

Anthony Metaxa and his wife lived for two years and a half in Edinburgh, but acquired no settlement in Scotland. While living in Edinburgh, the wife gave birth to a child, and afterwards the husband died at Glasgow, and the widow and child became destitute.

The child was supported by St Cuthbert's, with which it had no connection except present residence ; and that parish claimed relief against Edinburgh, as the parish of the child's birth.

The City, while admitting these facts, alleged that the mother had been born in Dublin, her mother being an Irish-woman, daughter of a small farmer, and pleaded that, consequently, she was not an alien, but had a settlement in Ireland, on which St Cuthbert's ought to have recourse.

"*May 16, 1846.*—The arbiter sustained the claim of relief."

"*Note.*—The child was confessedly born in Edinburgh, which constitutes its only connection with any parish in Scotland. But this, by the law of Scotland, gives it a settlement in Edinburgh. It is of no earthly consequence whether the parents were alien or Irish, further than that, if there be any claim against an Irish parish, it will be open to the respondents to make it good; but as in a question with the parish of St Cuthbert, Edinburgh, which is the parish of the child's birth, can never throw upon that parish, which has no sort of connection with it, the burden of its support, or the *onus* of seeking any relief competent."

24. *St Cuthbert's v. Edinburgh.*—*Jane Barnet.*—
(*Edinburgh.*)

Revised by Mr Dunlop.

A child, having been born in a charitable maternity hospital, to which the mother had voluntarily come from another parish a few hours before its birth, and in which she remained seventeen days afterwards, held, that in a question of settlement, the child must be dealt with as if it had been brought forth at the place of its parents' residence at the time, although they never had a settlement there, and it was in a different parish from the actual place of birth.*

John Barnet, an itinerant cutler, and his wife, neither of whom were known to have acquired a settlement in Scotland during their lives, resided for some time in the City parish; and, during that time, she gave birth to a child, Jemima Barnet.

The child was not actually born in the City parish, its mother having removed voluntarily, a few hours before its birth, to a maternity hospital in St Cuthbert's parish, for the purpose of being gratuitously provided with medical attendance at her delivery. She remained in the hospital for seventeen days, on the expiry of which she returned with her child to her husband's residence in the City parish, where they continued to live for several months afterwards. The

* See No. 37, p. 276.

mother having subsequently, while residing in St Cuthbert's, obtained interim relief for the child, being then in a state of destitution, that parish sought recourse on the City parish.

The arbiter, Mr Dunlop, pronounced the following judgment :—

“ *Edinburgh, December 9, 1846.*—The arbiter finds the parish of Edinburgh liable to relieve the parish of St Cuthbert of the advances made to Jane Barnet, in respect of her child Jemima, and also of all future claims on her behalf; and appoints an account of such advances to be lodged within eight days, and seen for eight days thereafter : Finds no expenses due.

“ *Note.*—The arbiter has had considerable difficulty in this case ; but without going into the disputed averments as to the character and extent of the father's residence in Edinburgh, he conceives the circumstances attending the birth of the child sufficient to lay the burden of its maintenance on the City parish, whatever might turn out to have been the character of the father's residence there ; and he, consequently, considers it unnecessary to put the parties to the expense of a proof regarding this. In regard to the birth of the child, although the resorting to the Maternity Hospital in St Cuthbert's, where it was born, was the voluntary act of the parent, he still thinks that a child born in such an hospital must, with reference to a question of settlement, be dealt with as if it had been brought forth at the place of its parents' residence at the time ; and the parents in this case having been resident in the City parish, to which the mother returned immediately after her confinement, it must be viewed, in reference to a question of settlement, as if it had been actually born within the city.”

25. *Edinburgh v. St Cuthbert's.*—*Margaret or Mary Henderson, a Lunatic.*—(*Edinburgh.*)

Revised by Mr Dunlop.

1. Special circumstances under which the receipt of temporary parochial relief by a wife, while living apart from her husband, was

held insufficient to disqualify him for acquiring a settlement by residence.

2. Held that a parish, which has a public asylum, in which it maintained a pauper who was ultimately found to belong to another parish, was not entitled, in settling the claims of relief, to charge the full rates of board at which it is in use to contract with other parishes for the receipt of their paupers, which includes a profit on the establishment; but only the actual cost to itself of the pauper's maintenance.

Margaret Henderson, a lunatic, wife of William Henderson, still living, had led an irregular life, separate from her husband. In 1832, while living apart from him, she had been taken into the Edinburgh Charity workhouse, which she left in a few weeks, and thereafter, for some time continued to receive occasional out-door relief from the City—in consequence, as alleged by the City, of the great mass of applications during that year—the cholera year—and the impossibility of investigating them thoroughly. In March 1837, she was taken first to the police-office of the city, and thence to the city bedlam, and had since then been maintained there in a state of hopeless insanity at the expense of the city, who claimed repetition, and to be relieved in future by St Cuthbert's, on the ground that the pauper's husband had, by a continuous residence in that parish (where he carried on business as a baker), from 1830 to 1839, acquired there a settlement.

St Cuthbert's disputed the facts as to the residence, and further averred, that during whatever residence took place in St Cuthbert's, William Henderson and his family were proper objects of parochial relief—relying considerably on the relief received by his wife in 1832. A proof was allowed, which established that Henderson had lived for the period alleged in St Cuthbert's, and that although in somewhat embarrassed circumstances, he had carried on business as a baker, and had maintained himself and his children. It further appeared, that when his wife was relieved in 1832, she was in an unsettled state of mind, but no evidence was adduced of her having continued in that state between 1832 and 1837.

“ Edinburgh, April 24, 1846.—The arbiter having con-

sidered the proof and whole process, Finds that William Henderson, the husband of the pauper, by residence in the parish of St Cuthbert, for more than three years prior to the period when his wife was received into the city bedlam, had acquired a settlement in that parish for himself and his family; and finds, therefore, that the parochial board of the parish of St Cuthbert is bound to relieve the parochial board of the City of Edinburgh of the maintenance of the pauper, Margaret Henderson, in time to come, and to repay the sums already advanced on her behalf, since she was received into bedlam as aforesaid; and allows the St Cuthbert board to make objections, if they any have, to the account lodged in process by the City board, and that within four days; finds no expenses due.

“*Note.*—The arbiter has no doubt on the proof that, throwing out of view the situation of the pauper, the residence of William Henderson in the Lady Wynd, in the parish of St Cuthbert, was of such a kind and duration as to have acquired for himself and family a settlement in that parish, at the time when his wife was received into the city bedlam. The only ground of doubt arises from the averment of the claimants themselves, confirmed to some extent by the testimony of the chaplain and the gatekeeper, that when the pauper got relief about the year 1832, she was already insane. If it had been established that she was then in a state of permanent insanity, which would have created a charge for her maintenance, beyond what a man in her husband's situation could possibly have borne, and would have entitled him then, as now, to insist on the expense of the lunatic asylum being defrayed by the parish, the arbiter would have hesitated in holding—supposing that Henderson had not in 1832 a settlement in St Cuthbert's—that he could by his residence there, *after he had fallen into that state*, have transferred the burden from Edinburgh—the place of his previous settlement—to St Cuthbert's. There is, however, no satisfactory proof to this effect, and it is impossible, if her appearance then had been anything more than the temporary consequence of her irregular habits, that it should not have been quite manifest, and put beyond all doubt, during the interven-

ing years from 1832 to 1837. The arbiter also inclines to think it proved, that Henderson had completed three years residence in St Cuthbert's before his wife was received into the workhouse in 1832; but he considers it unnecessary to rest on this, in consequence of the views he has expressed above."

A question subsequently arose as to the principles on which the lunatic's board, while in the city bedlam, should be calculated, she having been kept in a public asylum, which is maintained by the Edinburgh board. The Edinburgh board claimed the same rates of board and other allowances as were customarily paid by parishes who applied for the admission of any of their paupers; whereas it was objected, for St Cuthbert's, that that rate of board included a profit on the establishment, and that they were liable only for what the lunatic's maintenance had actually cost the Edinburgh board, taking the average cost of each inmate from the reports of the institution. The total claim was L.216, 13s., the pauper having been maintained by the Edinburgh board for nine years.

The arbiter (May 9, 1846) appointed the City board to produce the reports of the institution for the years over which the claim extends, and on inspection thereof (May 16, 1846), sustained the objections, to the effect of restricting the board charged prior to January 1, 1845, to L.12 a-year, the estimated actual expense of each lunatic, instead of L.20, which, besides clothing, was the rate claimed.

26. *Parish of St Cuthbert v. Parish of Linlithgow.—
Mary McNeill and Children.*

Revised by Mr Dunlop.

1. Held that, under the late statute (sect. 70), the parish in which application for interim support is first made and allowed, must continue to provide it (notwithstanding the pauper's voluntary removal to another parish), so long as that same state of destitution which warranted the original claim, subsists continuously.

2. Where the parents' settlement cannot be discovered, casual birth in a parish fixes a settlement on that parish, although the parents had no residence there.

John M'Neill, a gas-fitter by trade, accompanied by his wife Mary M'Neill, far gone in pregnancy, and four children, came to Linlithgow on the evening of the 20th February 1846, he being then travelling about in search of work. His wife was unable next day to go on any farther, and the family being in a state of destitution, the inspector gave them interim relief. On the 24th, he told the husband that he must go forward in search of employment, and that his wife would be taken care of; and the husband left Linlithgow, going towards Edinburgh, and taking the two eldest children with him. On the 28th, the woman was delivered of a child at Linlithgow; and on the 10th March, she and the children proceeded by the railway train to Edinburgh, having been in the meantime supported by the parish of Linlithgow. She did not find her husband in Edinburgh, and she and her children were received into the House of Refuge. She applied for relief to the Canongate and City parishes, who were stated to have refused, on the ground that the railway terminus being in St Cuthbert's, the burden of interim relief must fall on that parish. Accordingly, the inspector of that parish defrayed the expense of her residence in the Refuge, where she died on the 31st of March, after this submission was entered into.

St Cuthbert's claimed to be relieved by Linlithgow.

Some averments were made by St Cuthbert's as to the removal of the woman compulsorily, and before she was in a fit state to be removed; and as to the usage sustained by her, and injury to her health suffered in consequence; but these were denied by Linlithgow, as also was a statement that her husband had deserted her. The narrative, as above given, contains the facts not disputed.

The parties were willing to have the case decided on the statements lodged by them, without further discussion.

The arbiter, Mr Dunlop, pronounced the following judgment:—

Edinburgh, April 16, 1846.—The arbiter finds that the parochial board of the parish of Linlithgow is bound to relieve the parochial board of St Cuthbert's parish of all advances, in the way of interim maintenance, already made by them to or on behalf of Mary McNeill and her children, and of the burden of such further maintenance as the children may be legally entitled to; and that the burden of seeking recourse on the father, or the parish of his settlement, if any, lies on the parochial board of Linlithgow; and he ordains the said board to relieve the parochial board of St Cuthbert of this burden, and of the future maintenance of the children, and to repeat the sums already advanced by them, and to make payment to them of the sums disbursed by the said parochial board of St Cuthbert, in this submission; of which appoints a note to be lodged in process; and decerns.

“*Note.*—It does not seem to the arbiter necessary to have any inquiry into the disputed averment; for, taking the facts exactly as stated or admitted by the parish of Linlithgow, it seems to him that the claim against them is well-founded. There is no question here of settlement or permanent support. Nor is it disputed that Mary McNeill and her children were proper objects of *interim* assistance under the late statute. Linlithgow commenced giving such aid, and St Cuthbert's continued it. The only question is, whether, Linlithgow having begun to give it, the obligation to continue it, and the burden of seeking the recourse which, by the 71st section of the statute, is reserved to parishes advancing interim relief to destitute persons having no settlement therein, against the pauper's proper parish, or “his parents or other persons who may be legally bound to maintain him,” are to be held as transferred over upon the parish of St Cuthbert, because that was the parish in which the railway passing Linlithgow terminates, and in which the pauper found herself on coming out of the train. The arbiter throws out of view the averments as to her having been compulsorily removed; as to her husband having “deserted” her, in the sense of his having permanently abandoned her; and as to her in-

ability to be removed. He assumes that she herself wished to come to Edinburgh; that her husband, when he left her, went in search of work; that she expected to find him in Edinburgh, and also that she was so far recovered from her confinement as not to render it dangerous for her to travel. Still, on the other hand, it is not alleged that she did find her husband in Edinburgh, nor is it pretended that, though in a state to travel, she was in a state to support herself and her children, and was not in fact still in the same condition of destitution as while she was receiving relief at Linlithgow; and it is admitted that she died in the course of three weeks. Now, if she had remained in Linlithgow, she would have continued in such circumstances to have received interim maintenance from that parish, and on them would have lain the burden of seeking recourse against the husband, or the parish of his settlement. Does, then, her voluntary removal from Linlithgow, without any other change, relieve them of that burden? The arbiter thinks that it does not; but that, under the statute, it is the parish in which application for interim maintenance and support is first made and allowed, which must continue to provide it so long as *that same state* of destitution which warranted the original claim, subsists *continuously*.

“ It may farther be noticed, that, as the *infant* was born in Linlithgow, failing the discovery of the father’s parish, it would be held to be settled in that of Linlithgow.”

27. *Elizabeth Boyd v. Parish of St Quivox (Ayrshire)*.

Revised by Sheriff-Substitute.

Circumstances in which it was held (reversing the sheriff-substitute’s judgment), that a mother, before being entitled to parochial relief, was bound to use diligence against her son to compel him to contribute to her support.*

The applicant was an old woman of about 70 years of age; had two daughters, hand-sewers, one of whom had a

* Compare with No. 1., p. 207, and Nos. 19 and 20, p. 241, 242.

natural child, to whose support the father had contributed nothing. The daughters might earn 4s. each a-week, and the mother 1s. 6d. Applicant had also a son in good employment, but he gave her nothing. Till very recently the parish had paid the rent of her house. These facts were admitted in a joint-minute; and, on advising, the sheriff-substitute (Robison), August 3, 1846, found applicant entitled to be placed on the roll, and found inspector liable in expenses. This decision, however, was reversed on appeal, the sheriff (Bell) holding that applicant was, in the first place, bound to use diligence against her son, to compel him to give assistance; and that upon his failure, and then only, she might apply to the parish.

28. *Mary Wells v. The Parochial Board of Newton*
(*Ayrshire*).

Revised by Sheriff-Substitute.

The head of a house, which was supported at the common expense of the inmates, being on the poor-roll, and in regular receipt of permanent relief; held that it was incompetent for the other members of the family to complain to the sheriff on being refused a separate allowance, the sheriff holding that this was substantially a question as to the *adequacy* of relief.*

The applicant, whose age is 26, is the mother of three illegitimate children, the eldest of whom is 10, the second three years of age, and the youngest only nine months old. The fathers contribute nothing to the support of these children. The applicant occasionally works as a weaver, but earns very little. Her mother, with whom she resides, is unable to give her any assistance, being herself a pauper, in the receipt of 5s. a-month from the above parish. Her brother, also resident with her mother, is in bad health, and earns little.

To this it was answered, by the inspector, that the applicant is a stout, healthy, young woman, and perfectly able to provide for herself and her children: that the eldest of her children could support himself, as he earned be-

* See No. 11, p. 228, and No. 14, p. 234.

twixt 4s. and 5s. a-week; and that, as the applicant's mother was already in receipt of parochial allowance, it is incompetent for the applicant, or any other inmate of the family, to apply for a separate or additional allowance.

On advising, the sheriff-substitute (Robison), of date 7th August 1846, found that, in the admitted circumstances of the case, it must be held that the relief granted to the applicant's mother from the poor's funds of the parish was granted to her as the head of the house, in which the applicant and her natural children reside; and which is supported at the common expense of the inmates; that the question now raised, therefore, truly resolved itself into one as to the adequacy of the amount of relief afforded to the household, and could not competently be entertained by the sheriff under the provisions of the Act 8 and 9 Victoria, cap. 83; therefore dismissed the application, and found no expenses due.

This decision was affirmed on appeal by the sheriff (Bell).

29. *Elizabeth Jane Colborn v. William Main, Inspector of Leswalt.*

Revised by Sheriff.

1. Held, that the mother of a bastard, who refuses to accept an offer by its putative father, a married man, to receive the child and maintain it in his own family, is not entitled to insist in a claim for parochial relief on account of the child.*
2. Question—Whether a woman, 24 years of age, in good health, and able to work, can maintain a claim for parochial relief on account of her having one illegitimate child to support.†

Elizabeth Jane Colborn has an admitted settlement in Leswalt. She is in good health, and 24 years of age. In January 1843, she had an illegitimate child to James Braddan, who subsequently married another woman, by whom he has one child, an infant. Braddan obtained an obligation by his master to pay the mother of his illegitimate child L.2, 10s. a-year of alimient for the child, so long as Braddan should re-

* See the case of Weepers, p. 67, No. 76.

† See No. 30, p. 258, and No. 31, p. 261.

main in his service. Braddan and one of his relations bound themselves unconditionally for the payment of aliment at that rate. It did not appear whether any payment had been made under that engagement, but, at all events, it was not continued, Braddan having removed to another county. And in the spring of 1846, Colborn applied for parish relief. The inspector thereupon communicated with Braddan, who offered to take the child into his own family, and so relieve the mother of its support. She declined to part with it, objecting to place the child under the charge of Braddan's wife.

These facts were established in a proof, in the course of which the pursuer proved also, that she cannot earn more at her ordinary occupation of web-sewing, than 1s. 6d. or 2s. per week, while attending to her child; and that she lives with her father, a labourer, who has a delicate wife and three young children to support. All the witnesses who were examined as to her ability to maintain herself and her child, agreed that she could not give due attention to the child, and at the same time earn enough to support both herself and it.

The sheriff-substitute (Macdonell), on 29th April 1847, pronounced the following judgment, to which the sheriff (Urquhart) adhered on appeal (25th May 1847).

“Wigtown, 20th April 1847.—Having resumed consideration of the closed record and proof by both parties, with the writings produced, Finds it admitted or proved, 1st, that the pursuer is a woman of the age of 24 years or thereby, and in good health, and able to work; 2d, that she is the mother of one illegitimate child, now about or upwards of two years of age; 3d, that the putative father of the said child, who is now married and has one lawful child, and who is a labouring man, has offered to relieve the pursuer of her child, and take it into his own family and maintain it there (but that the pursuer refuses to part with it); and, moreover, as appears from the production No. 2, with the answers No. 2, to have found caution for an aliment of L.2, 10s. per annum to the pursuer on account of the child: Finds that, in these circumstances, the pursuer is not entitled to the relief prayed for; therefore recalls the order for interim aliment, assoilzies the defender from this process, and decerns: Finds the pur-

suer liable in expenses, of which allows an account to be given in, and, when lodged, remits the same to the auditor of court, to tax and report.

(Signed) "A. MACDONELL.

"*Note.*—The sheriff-substitute thinks it doubtful whether a person in the circumstances stated in the first two findings can be considered a party entitled to parish relief. See Dunlop, 2d edition, pp. 335, 336. But the other circumstances mentioned in the third finding seem to remove all doubt on the subject. It does not appear whether the pursuer has ever taken any steps to recover from the putative father any aliment for the child, while it appears from the production referred to, that he had given at least one permanent cautioner for an aliment of L.2, 10s. per annum, which, in his situation in life, seems to be a fair sum for the half of the child's support. At all events, it is proved that he has offered to relieve the pursuer of the child, by taking it into his own family, but that the pursuer refused to part with it, and insists upon keeping it, in virtue of her right of custody at its present age. It is not said that the father's family is in any respect an unsuitable place for the child; and the sheriff-substitute knows of no authority by which, in these circumstances, a mother can insist on her right of custody at the expense of the poor's-funds of a parish."

30. *Grace M'Dowall and John M'Dowall v. Andrew Niven, Inspector, Portpatrick.*

Revised by Sheriff.

A girl of 17, living with her father, a respectable farmer, having had a bastard child to a servant boy of from 15 to 17, both being in good health, and no legal proceedings having been taken against the bastard's putative father, held not a proper object of parochial relief.*

Grace M'Dowall, a native of Portpatrick, 17 years of age, resided in that parish since her birth. On 25th April 1847, she had an illegitimate child, whose father was, according to her averment, 15, and was admitted by the parish to be about 16 or 17 years of age. She applied to the parochial board for

* See No. 29, p. 256, and No. 31, p. 261.

relief for the child, within eight or nine days after its birth, on the ground that, from youth, both she and the father of the child were unable to do anything towards the child's support. Her application having been refused on 6th May, she, with concurrence of her father, a farmer, paying L.43 of rent, with whom she continued to reside, complained to the sheriff on 2d July 1847. The inspector of the poor, while maintaining that the father could afford to contribute a sum periodically from his wages towards the child's support, admitted that he could not do so "to the full extent" of his liability, "the mother, as is usual in such cases, contributing likewise." The complainer alleged that she had no means to support the child or to provide a nurse, &c., that she "is prevented from going to service by the necessity imposed upon her of nursing and attending to her child," and that she was indebted to her father for her own and her child's support in the meantime.

No legal proceedings had been adopted against the putative father, to enforce his obligation to contribute to the child's support.

The sheriff-substitute (Macdonell) on 31st July 1847, held that the petitioner is entitled to relief, and decerned in terms of the prayer of her petition with expenses, adding the subjoined

"*Note.*—A grandfather lies under no legal obligation to support a bastard grandchild, and the aliment here claimed is entirely on account of the child in question. From the age and position of the parents, it does not seem to be seriously maintained that they are at present in a condition to be able to earn a sufficiency for the child's support. As to the extent or period of endurance of the parochial aid, the sheriff-substitute offers no opinion."

The inspector reclaimed, relying on a dictum of Lord Pitmilley (Monypenny on the Poor-Laws, p. 330), that aliment to natural children should be granted by the parish, only "after all other means of supplying it have been exhausted, and when it has become certain that the children must either be maintained by the public, or run the risk of starving for want." He also relied on the circumstance that the mother

had not been forisfamiliarated, as distinguishing this case, in regard to the grandfather's liability, from that of Nicoll, 19th June 1832, No. 39, p. 59.)*

The sheriff-substitute, on 12th August 1847, adhered to his former interlocutor, with the following note;—

“ The sheriff-substitute is quite alive to, and disposed to acquiesce in, much of what the defender contends for; but all cases of this description must be decided on their own specialties.

“ The sheriff-substitute by no means intends to lay it down as an absolute rule that an able-bodied woman, of mature age, is entitled, as a matter of right, to demand parochial relief on account of being burdened with a bastard child; but here neither father nor mother can truly be said to be of mature years, at least to be capable of earning the full wages of able-bodied men or women, and the child in question is a mere infant, unweaned, and requiring the constant care and attention of the mother.”

, On advising an appeal by the inspector, the sheriff (Ur-

* In Nicoll's case, where the Court decided that the maternal grandfather is not liable to aliment his bastard grandchild, the Lord Ordinary (Moncreiff), in passing the bill of advocacy, issued the following note :—“ The Lord Ordinary appointed the bill to be answered, merely because it was of so special a nature that a question of competency might arise. The only objection taken does not appear to him to be well-founded, at any rate, it is not such as to warrant him in refusing the bill. In other respects, it is his duty, under the Acts of Parliament and Sederunt, to pass the bill. But, on the merits, he may simply observe, without meaning to express any opinion, when he is not called upon to do so, that it does not appear to have ever been decided that a man is under a legal obligation to maintain his daughter's natural child, more especially after she has been forisfamiliarated, and is dead. The passage quoted from Erskine, certainly does relate to natural children, but it is very doubtful whether, in that point, he refers to any parents but the father and mother. There is also a difficulty in this, that, by the ordinary course, the paternal grandfather, where the paternity has been admitted, would be first liable before the maternal grandfather, which obligation could hardly be admitted. But the Lord Ordinary only means that the point is, at least, so doubtful, that the complainer is entitled to try it in a competent shape, which this seems to be.” See p. 29, 79.

quhart) recalled the sheriff-substitute's interlocutors, and assolizied the defender—

“ Reserving to the pursuer to make a new application, if so advised, on any change of circumstances: Finds no expenses due to either party, and decerns.”

“ *Note.*—The sheriff is unwilling to recognise a principle that a young man and woman who are old enough to have a natural child, are to be relieved from the burden of maintaining it, merely on the ground of youth. In the present case, no attempt has been made to discuss the father, either by taking a decree against him, or demanding any voluntary allowance from him out of his wages. It should at least be ascertained how much can be recovered from him before any claim should be made on the parish.

(Initialed) “ A. U.”

31. *Agnes M'Kie v. William Gibson, Inspector, Kirkmaiden (Wigtownshire).*

1. A female, 23 years of age, having a bastard child 2 years of age, and having failed to establish the paternity of the child in an action against the alleged father; held not entitled to parochial relief for the child, nor to a proof of her inability to maintain it, she being able-bodied, and in good health.*
2. *Observed*, That if the infant had been at the breast, she might have been entitled to relief, as one of the occasional poor.†
3. Opinion intimated, that the able-bodied are not entitled to relief under any circumstances.‡

Agnes M'Kie has an admitted settlement in the parish of Kirkmaiden. She is twenty-three years of age. She had an illegitimate child on 10th September 1845. She raised an action against a person whom she alleged to be the child's father, but he denied it; and her action failed for want of evidence. She then applied to the parochial board for relief to her child, now nearly two years of age, which was refused;—and she presented a complaint to the sheriff for redress.

She admitted that she lived in her mother's house, but averred that her mother had for some time been in receipt

* See No. 29, p. 256, and No. 30, p. 258.

† See No. 4, p. 214.

‡ See p. 138, and note.

of parochial relief, which had been withdrawn, and was now in delicate health, and supported by her sons, who are farm-servants.

The applicant rested her application mainly on an averment, that she "has no means wherewith to support either herself or her child, or to provide a nurse for the child, and is prevented from going to service by the necessity imposed on her of nursing and attending to her child;" and that even "if she were in service, she could not, from her age and inexperience, earn much more wages than would clothe her."

The inspector alleged, that the complainer is able-bodied, and in good health, which was not denied; and he maintained, that, as she did not aver any special disability to work, nor even any failure to find employment, she is not a proper object of parochial relief. The inspector alleged, that her ordinary earnings average 3s. 6d. per week, but were higher in harvest, during which time the complaint was presented.

The sheriff (Urquhart), on 31st August 1847, held that the complainer is not entitled to relief.

She reclaimed, and urged that the application was not made for herself, but in respect of her infant, now scarcely two years of age, with whose support she is burdened, on account of her failure to make out a *semiplena probatio* against the alleged father. She offered to instruct "that she is unable to earn enough to support herself and her child;" and taking the inspector's admission, that her ordinary earnings average 3s. 6d. per week, she submitted that it was manifest, even without proof, that 6d. per day is not sufficient to provide a woman and child with food, lodging, clothing, and fuel. She stated also, that she is sometimes unable to find employment, and often does not earn a penny per day. She craved a proof, before answer, of her inability to maintain herself and her child.

It was answered for the parish, that there is nothing relevantly averred by the petitioner on the record, to shew that she is incapacitated to maintain both herself and the child.

On advising the petition and answers, the sheriff (Urquhart) pronounced the following judgment:—

Wigtown, 24th September 1847.—The sheriff having resumed consideration of the reclaiming petition, No. 3, with the answers and whole process, the sheriff-substitute, as directed by him, Refuses the petition, and adheres to the interlocutor reclaimed against.

(Signed) “ A. MACDONELL.

“ *Note.*—The sheriff has not formed his opinion in this case without much consideration and inquiry into the practice of other counties. The grounds upon which he has felt himself compelled to reject the pursuer's claim to be put on the poor's-roll as an object of parochial relief, are as follows :—

“ 1st, He holds it to be fixed law, that an able-bodied person, not incapacitated from work, either by age, sickness, or any other disabling cause, is not an object of parochial relief ; and that it is irrelevant for any such person to say that they cannot earn wages sufficient for their support, merely from lowness of wages, or any other cause, except disability to work ; for the law of Scotland (right or wrong) does not recognise an able-bodied person, under any circumstances, as an object of parochial relief, when he has no incumbrance, but only him or herself to maintain.

“ 2d, In the ordinary case, a parent (father or mother) is bound to support, by his own labour, not only himself, but all his children residing in family with him ; and the only ordinary relaxation of this rule which has hitherto been sustained in practice, is when an aged father or widowed mother is burdened with the support of such a number of children, unable to work for their own support, as to render it plainly impossible for the parent to earn a maintenance for them.

“ In practice, the sheriff understands that young and able-bodied widows are expected to support at least one, and generally two infant children, by their own labour, and without parochial assistance ; and the sheriff thinks, that the same rule must apply to the mother of a bastard child.

“ 3d, No doubt, there may be an exception, and a claim for temporary relief, on the roll of occasional paupers, for a mother having an infant at the breast, who must necessarily

occupy all her time, and exhaust her strength in nursing. The mother, in that case, is under a temporary disability or incapacity of working, and may have a good claim against the parish, either to give her occasional relief, as a pauper unable to work for the time, or to take the burden of nursing her infant off her hands. But, in the present case, the pursuer's child is two years old, past the age of nursing, by no means requiring constant attendance, so as to incapacitate the pursuer from earning her livelihood at her ordinary work, and is, besides, living along with the pursuer, in the house of the pursuer's mother, who is not a pauper, nor receiving parochial relief."

32. *Ann Wells v. Christopher Borthwick, Inspector of Middlebie (Dumfriesshire).*

Opinion intimated, that it is not a sufficient reason for refusing relief, that the pauper will not remove from another parish into the parish of settlement, that he may be "under the eye" of the inspector.

In this case the pauper did not reside in the parish of her settlement, and the inspector having sent a cart to bring her there, she refused to come. He stated this, *inter alia*, in answer to a complaint by her to the sheriff that relief had been withheld; and the sheriff-substitute (Trotter), on 29th June 1847, held that the reason was invalid, adding the following

"*Note.*—The sheriff-substitute is not aware of any provision in the recent statute, by which the parish of settlement can *compel* a pauper to remove from the parish of his residence, in order that he may be 'under the eye' of the inspector. The parish of *residence* is empowered, by the 72d clause, to remove a pauper to the parish of settlement; but no such power seems to be conferred on the parish of settlement, to remove him from the parish of residence."*

* See p. 34, line 10; also p. 144, line 3.

33. *Sinclair or Macdonald v. Thomson, (Lanarkshire.)*

A pauper who, on applying for relief, had been offered maintenance in a public hospital, held to have no ground for an application to the sheriff as having been refused relief, under the 73d section of the New Poor-Law Act.*

The pursuer complained to the sheriff under the 73d section of the statute. See p. 144, line 19.

She had formerly been an inmate of the Town's Hospital in Glasgow, and left it at her own desire. She subsequently applied for relief, and was offered re-admission to the Hospital, which she declined. The sheriff pronounced the following judgment:—

“*Glasgow, 21st July 1846.*—Having considered the proof for both parties, and reviewed the process, finds it proved, that the pursuer was aware, and had been repeatedly told, before this action was raised, that she would be received back into the Town's Hospital, where she had been formerly supported, and from which she had been discharged at her own request: Finds, that the said hospital is still open to her, and has been so from the time she first renewed her application for relief, subsequent to her said discharge; therefore, finds, that as there never was any refusal on the defender's part to grant such relief as appeared expedient, there was no necessity for instituting the present proceedings; sustains the defences, and dismisses the action: Finds the pursuer liable in expenses; allows an account thereof to be given in, and remits the same to the auditor to tax and report, and decerns.

(Signed) “HENRY GLASSFORD BELL.”

34. *Mrs Jean Mackenzie v. Inspector of St Cuthbert's (Edinburgh).*

A married woman, deserted by her husband, having applied for parochial relief for an infant child, was offered admission for her child to the workhouse, on condition that she should accompany it, which she refused; held that it was incompetent to complain

* See No. 34.

to the sheriff under section 73 of the statute (See p. 144), in respect that there was not a "refusal to relieve."

Mrs Mackenzie, a married woman, deserted by her husband, with an infant child, four or five years of age, applied for relief for the child to the inspector of St Cuthbert's. The inspector refused to give out-door relief, but offered to admit the mother and child to the workhouse. She declined this offer, and complained to the sheriff that the inspector had refused relief to the child. The sheriff issued the usual order for interim relief, which the inspector declined to obtemper, otherwise than by admitting the mother and child to the workhouse, as formerly offered.

The mother stated in the process, that she was quite willing that the child should go into the workhouse; but contended that, as she did not apply for relief to herself, and only for the child, the inspector was not entitled to insist, as a condition of his giving that relief, that she also should go into the workhouse; she being able and willing, with the assistance of two children by a former marriage, to earn a livelihood for herself, by her own labour.

The sheriff-substitute (Tait) pronounced the following judgment:—

"*Edinburgh, 21st April 1847.*—The sheriff-substitute having considered the closed record, in respect it is admitted by the applicant that the inspector did not refuse relief, dismisses this application as incompetent; finds the applicant liable in expenses; allows an account to be lodged for taxation, and decerns.

"G. TAIT.

"*Note.*—It is only in the case of refusal to relieve, that the sheriff is directed by the act of Parliament to interfere. If the party be dissatisfied *with the relief offered*, the competent course seems to be, to apply to the board of supervision.

(Intd.) "G. T."

The mother reclaimed, and urged that the words of the 73d section are very general—"if relief shall be refused." These words are used in their popular, and not in any technical or legal sense; and a general and comprehensive expression is used, so as to include refusal of relief of every

kind, and in every manner. Now relief may be substantially refused, although ostensibly offered.* Surely this provision of the act is intended to apply to such a case, otherwise it is very limited in its effect, and capable of being easily evaded. But the judgment under review seems to require a formal refusal, without looking at the substantial effect; and to hold the remedy provided by the statute inapplicable, unless a refusal in so many words is alleged by the complainer. That is thought too narrow a view of the enactment. Every refusal is plainly included by it; and in every case of substantial refusal, it comes into operation. Thus relief is, in effect, refused, though ostensibly offered, when an impossible, or illegal, or oppressive condition is adjoined to it, such as removing to another place, or undertaking to go into another parish, or to make no farther claim at any time;—instances of which, the pursuer has been informed, have occurred under this very statute, and been held to be refusals of relief in the sense of the act. So, in the present case, the inspector adjoined to his offer to relieve the child, a condition that the mother, who had not asked relief for herself, should forfeit her liberty, and submit to the confinement of a poor-house. Was that a reasonable condition? Was it one to which she was bound to submit? There is no authority, either at common law or under the statute, for such a doctrine. Indeed, it would be at once unjust and impolitic. It would be reducing the pursuer herself to a state of pauperism,—an object which the law is framed carefully to avoid, and which the administration of the poor-law in Scotland always has eschewed. It is quite true, that the parochial authorities are entitled to decide in what mode they will administer relief; but that applies only to the party requiring relief. In the present instance, the inspector was, no doubt, entitled, had the pursuer applied on her own account, to say, “I will give you relief in the workhouse,” and so he was entitled to insist that the child should be placed there; but he had no power, because the child required sustentation from the poor-funds, to say, that the pursuer herself also required it, and should become a burden on the poor-funds, or a recipient of that which she did not ask or desire. Take the case

* See p. 294.

of a foundling or an orphan, taken under the protection of a party who was under no legal tie to support it, and who afterwards, becoming desirous to be relieved of the burden, applied to the inspector,—Would he be justified in saying, “I will take the child into the workhouse, but you must come along with it?” He certainly would not. There is nothing in the statute that could warrant such a demand. By the inspector’s admission, it was the *sine qua non* of the relief offered by him to the child, that the pursuer should go into the workhouse also. Unless the pursuer consented to go into the workhouse, he would give no relief to her child. If the inspector was not entitled, as a matter of law and right, to insist for this, it is plain this was in effect refusing, not offering relief; and, therefore, the present case does fall under the statute, and is competent. The inspector was not entitled to adject any such condition to the relief which he was confessedly bound to give, the pursuer’s child being, *ex concessis* of the offer, an object for relief.—The board of supervision, it was urged, is not competent to entertain the pursuer’s complaint. It is where relief is *granted*, and the poor person receiving that relief considers it inadequate—that is, not of sufficient amount—in that case alone that an appeal lies to the board of supervision. In the present case, there is no question as to the amount or adequacy of *relief granted*. *First*, because no relief has been granted; and, *secondly*, because the complaint is, that relief has been refused: not that the relief offered is too small or inadequate. It is perfectly plain, therefore, that the pursuer has *no persona standi* to go to the board of supervision under the statute; and that if she did, her application would be at once rejected as unauthorised by the Act of Parliament, and incompetent. The result, therefore, would be, if the sheriff-substitute’s judgment is adhered to, that the pursuer has no means of redress or mode of review open to her, and must submit to be denied relief at the will and pleasure of the inspector, because he may put his refusal in the shape of an offer, coupled with an unreasonable condition. If this be law, the inspector may adject any other condition he pleases, in any case, and so shut out that which the statute evidently

contemplated, viz., a power of reviewing his deliverance, in every case where it resulted in withholding the relief asked. This would open a door to an evasion of the statute, which the pursuer is confident cannot be sustained or sanctioned.

It was answered, for the inspector, The statute confers a new jurisdiction on the sheriff, in cases where there is a refusal of relief, and a jurisdiction so conferred for the first time cannot be extended beyond the strict terms in which it is granted. Unless, therefore, there be a clear refusal, there is no jurisdiction in the sheriff. But the pauper is not left without his remedy, where he conceives that the relief offered is not of the character or amount with which he is bound to be satisfied. In that case he is entitled, with leave of the board of supervision, to carry his case to the Court of Session, who have all along exercised the power of deciding with respect to the kind and amount of relief tendered to paupers. On the pauper's own admission in this case, relief has not been *refused*. The parochial board offered to take her and her child into the workhouse, where all needful sustentation would be supplied to them. This offer she declined; but notwithstanding of her rejection of it, it still exists as a fact; and there was no *refusal* to give relief. Hence the petitioner's argument consists partly of unmeaning verbal criticisms on the phraseology of the 73d section of the statute, partly of an appeal on the merits against the reasonableness of the relief offered. The respondent admits that there may be a refusal sufficient to satisfy the requirement of the act, of a merely negative character,—that is to say, by the parochial board *not* taking up the pauper's application, or *not* offering relief. Nay, an extreme case may, but with some difficulty, be imagined, in which the relief tendered is so clearly and absurdly illusory, as to be virtually a refusal. But here sufficient and substantial relief has been tendered, and if the pauper is dissatisfied with it, the proper statutory means of redress is an application to the board of supervision. Many applications have already been made to that board, where the ground of complaint was that the inspector, instead of giving outdoor relief, had offered to take the pauper into the workhouse. In the case of *Gunn v. St Cuthbert's*, 6th March

1847 (See note, p. 150), the inspector offered to take the mother and her natural child (on account of which the application was made) into the workhouse; to which the mother answered, "The claimant declines going into the charity workhouse, as she herself does not require parochial relief, and never applied for it. She has had, and still has, a filial duty to perform, in attendance on the sickbed of her mother, which prevents her going there, even if she wished it. But suppose that duty was at an end, she humbly submits it would be a stretch of power on the part of the parochial board to burden the public with her support, when she only asks a reasonable aliment for her child, with whom it is fixed law she cannot be compelled to part." That case came before the board of supervision, and they refused to sanction an advocacy to the Court of Session in regard to future aliment, "*in respect that the parochial board of St Cuthbert's has offered to admit yourself and child to the workhouse.*" This deliverance was held conclusive on the question of future aliment, and the only discussion which ultimately took place in the Court of Session regarded the arrears which had fallen due prior to the passing of the act.

The sheriff-substitute, on advising the reclaiming petition, and answers, adhered to his previous judgment on 17th May 1847. The mother appealed to the sheriff (Speirs), who, on 28th May 1847, affirmed the previous judgment.

35. *Masson v. Cassels, Inspector of Govan, (Lanarkshire).*

Where a pauper, at the end of three months after the date of her application to the inspector, had not been admitted to regular relief, though she had received allowances at irregular intervals to the amount of 13s. 6d.; held, that the relief to which she was entitled had been substantially refused, or at least unduly delayed, and that she was entitled to complain to the sheriff.

The complainer, a female, 72 years of age, and very frail, complained to the sheriff on 15th February 1847, that she had applied for relief to the defender, in whose parish she lives, on 4th November 1846, and that, although more than three months had elapsed, she had not been placed on the regular

roll of paupers. She admitted that she had received allowances, at irregular intervals, to the amount in all of 13s. 6d. It did not appear that her claim to be admitted to regular relief had been brought before the parochial board for consideration.

The inspector maintained that relief had not been refused, and that this was a question as to the *amount* of relief, which the sheriff was not competent to entertain. He also maintained that the pursuer had no settlement in the parish. She, on the other hand, relied on the 70th section of the Poor-Law Act, as entitling her to relief whether she had a settlement or not, and urged that, by the course taken by the inspector, she was excluded from the privilege given to paupers on the roll, of complaining to the board of supervision that the relief was inadequate.

The sheriff-substitute pronounced the following judgment:—

“ *Glasgow, 2d June 1847.*—Having considered the proof for the pursuer,—the defender having failed to lead any conjunct probation,—and resumed consideration of the whole process, Finds it not denied by the defender that the pursuer is upwards of 72 years of age: Finds it proved that she has laboured for some time back under great bodily infirmity; that she has acquired a settlement in the parish of Govan; and that she is a proper object for parochial relief, and was so on the 4th November last, when application was made on her behalf to the defender: Finds that, although certain *irregular* payments were made to her as temporary relief, between said date and the 12th of February thereafter, amounting in all to 13s. 6d., she was not admitted to the regular roll of paupers, and it does not appear that her case was ever brought before the parochial board for consideration as to such admission: Finds that the defender was bound to have made inquiry forthwith into the pursuer's circumstances, and to have reported to his board; and not having done so, the pursuer could not avail herself of the privilege given to a pauper on the roll, to complain to the board of supervision that the relief afforded was inadequate: Finds that, in these circumstances, the pursuer having been substantially refused the relief to which she was entitled, or, at

least, such relief having been unduly delayed, was entitled to institute the present action;—the parochial officer being entitled to delay giving a final answer to an application for relief ‘for any period which to him may seem necessary for prosecuting his inquiries,’ *only* if ‘the necessary means of support are afforded to the applicant in the mean time,’ which was not the case in the present instance;—therefore, repels the defences, and ordains the parish of Govan instantly to proceed to determine the question of amount of relief to be afforded to the pursuer: Finds the defender liable in expenses, allows an account thereof to given in, and remits the same to the auditor to tax and report, and decerns.

(Signed) “HENRY GLASSFORD BELL.”

The inspector reclaimed, especially against the finding that the pauper has a settlement in the parish of Govan. The sheriff-substitute thereupon issued the following interlocutor:—

“*Glasgow*, 14th June 1847.—Having considered the reclaiming petition No. 14, with the answers thereto No. 15, and reviewed the process, recalls the finding in the interlocutor reclaimed against, that the pursuer has acquired a legal settlement in the parish of Govan, and with this alteration, refuses the petition, and adheres to the said interlocutor.

(Signed) “HENRY GLASSFORD BELL.

“*Note*.—The sheriff-substitute has recalled the finding as to the pursuer’s settlement, not because he is satisfied that it is incorrect, but because it is not necessary to support the other findings, the pursuer being entitled to their benefit whether she has acquired a legal settlement or not. It may also be as well not to prejudge this point, in case the parish of Govan should apply for relief to some other parish.

(Initialed) “H. G. B.”

The defender appealed to the sheriff, who pronounced the following final judgment:—

“*Glasgow*, 23d June 1847.—Having considered the interlocutor appealed from, and reviewed the whole process,

adheres thereto, for the reasons stated by the sheriff-substitute, as also those contained in the following note.

(Signed) "A. ALISON.

"*Note.*—The Sheriff entirely concurs with the sheriff-substitute, both in the reasons assigned in his interlocutor of 2d June current, for holding that the pursuer is a fit object for parochial relief, and also for the reason assigned in the note to the last interlocutor, that it is unnecessary to insert any finding as to the pursuer having acquired a settlement in the parish of Govan, as not necessary to her claim for relief, seeing she is an inmate there at this time, and as possibly tending to prejudice the defender's claim for relief against any other parish upon which the pursuer may be legally chargeable.

(Initialed) "A. A."

36. *The Parish of Gartly v. the Parish of Forgue,*
(*Aberdeenshire.*)

Where a farm-servant, residing regularly in his master's house, for the period necessary to acquire a settlement, had, during the same period, maintained a house for his wife and family in a different parish, held, with considerable hesitation, that the former must be regarded as the parish of his settlement, and liable, on his desertion, to relieve the latter of the burden of maintaining his wife and family.*

A married farm-servant had, for a period of about 20 years, rented a house in the parish of Forgue, where he maintained his wife, and brought up a family of seven children. During this period, he himself was engaged in various parishes, at a greater or less distance from Forgue, as a farm-servant. In 1839, he deserted his wife; and for a period of upwards of three years previous to the desertion, he had been living as a farm-servant in the parish of Gartly. Soon after the period of desertion, his wife applied to the kirk-session of Gartly for relief, and was admitted on the roll of poor of that parish; but, after the New Poor-Law Act came into operation, her name was removed from the roll, in the belief that the parish

* See No. 45, p. 303.

of Forgue was liable to sustain her on account of her residence therein; and as that parish refused to recognise its liability, the present action was brought by the parish of Gartly to try the point.

The parish of Gartly maintained that the house in Forgue, under the circumstances above stated, was the residence of the farm-servant in question; he resided there when his duties would permit of it; there his earnings were spent; and, consequently, that parish is liable to maintain his wife and family.

The parish of Forgue pleaded—A person gains an industrial residence in that parish where his industry has been expended, and the means of subsistence gained. This is especially applicable to the present case, where the party not only had his most common residence or head-quarters, but, from the nature of his engagement, his exclusive residence in the same place where his industry was so employed. A farm-servant's residence is in that parish where he is hired, where he lives and works. He cannot be absent a single day during the period of his service without the express consent of his master; and it makes no difference that the room or lodging where his wife resides may not be in the parish where he has established a residence. But, moreover, where any doubt exists as to the parish of residence, the burden is laid, by law, on that parish where the paupers "have had their most common resort," or "have most haunted," for the last three years; which, in the circumstances of this case, cannot be doubted to have been the parish of Gartly.

The parish of Gartly replied, that the law which imposed the burden of maintaining paupers on the parish where "they have most haunted," or "had their most common resort," for three years, was only applicable to cases where the paupers had no *known residence*, which was not the case here, the pauper having rented a house in Forgue, which was occupied by his wife and family.

Various English decisions were quoted as illustrating the pleas for the parish of Forgue. In one, where a dispute arose between two parishes relative to the settlement of a pauper, because *the nature of his occupation* required him to sleep

part of the night in a parish different from that in which his master lived, it was found that this was not *his ordinary and sufficient rest*; just (it was argued) in the same way that a casual and permitted visit of the pauper, in the present case, to the parish of Forgue, cannot be held to be equal to his ordinary and continued residence elsewhere.

The sheriff-substitute found, "That the pauper's husband had been continuously and industriously employed in the parish of Gartly, for a period exceeding three years prior to his desertion in 1839: That, on his desertion, his wife, the said pauper, was, after an inquiry, placed on the poor's-roll of the parish of Gartly, and continued to receive parochial aid till the present Poor-Law Act came into operation: That the said pauper has been excluded from the said roll of paupers, on the ground that her husband rented a house in the parish of Forgue, where she and her children resided, and where he visited her as frequently as the distance of the place of his employment and the nature of his labours would permit: That said ground of exclusion is disconform to law; and that the husband, by his constant industrial residence for upwards of three years in the said parish of Gartly, acquired for himself and family a settlement in that parish, notwithstanding the residence of the latter in another parish."

To this interlocutor the sheriff (Gordon) adhered on appeal, adding the following

"*Note.*—The sheriff has no wish to conceal that he thinks the present case attended with considerable difficulty, and that very weighty considerations may be urged to support an opposite decision. He has ultimately made up his mind to concur with the sheriff-substitute, on the ground that, it being settled law that the wife's domicile follows that of her husband, the husband's domicile, in the present instance, can be satisfactorily fixed only in the parish of Gartly, at the time of, and for three years previously to, his desertion of his wife. To hold that the residence of the husband was not at the place where, for three years continuously, he lived, worked, and slept, would be to leave some testing questions without an answer. Had he, except at the farm where he resided as a hired farm-servant, any legal domicile where a citation would

have been good? Could he have been sufficiently designed *quoad* his residence, in a criminal libel which made no allusion to the farm where he resided, but stated him to reside elsewhere? The sheriff thinks not, in either case, which he cites merely as illustrative of the obstacles which meet one at every turn, in fixing the domicile of the husband out of the parish of Gartly. Practically and legally the husband must be considered to have broken up any former settlement he had, and by constant industrial residence, to have acquired the domicile and settlement which is now to regulate the support of his family."

37. *Stranraer v. Glenluce and Portpatrick (James Fulton's case), Wigtownshire.*

Revised by Sheriff.

Circumstances in which a birth settlement was held to be acquired in a parish where the birth did not actually take place.*

James Fulton, a lawful child, was born in a lodging-house in the parish of Portpatrick, when his mother was on her way through that parish to Ireland from Glenluce, where, after her husband's death, she had resided previously for a few weeks. She had reached Portpatrick only a day or two before the child's birth. His father, an Irishman, never had any settlement in Scotland, and died before the child was born. The mother returned with her child to Glenluce in about eight days after it was born, and continued her residence there.

James Fulton never had any further connection with Portpatrick. He grew up, married, and acquired a settlement by residence in Glenluce, which he lost by subsequent non-residence for five years, under the 76th section of the late statute. He thereafter, without acquiring any new settlement by residence, deserted his wife and infant family, who became chargeable to the parish of Stranraer; and that parish raised an action of relief, concluding alternatively against Portpatrick and Glenluce.

These facts having been ascertained by evidence, the sheriff

* See No. 24, p. 247.

(Urquhart) held, that the settlement of the family must be determined by James Fulton's birth, and that Glenluce, though not the place of his actual birth, must, in the circumstances of this case, be held to be constructively so, in respect of his mother's residence there at the time.

38. *Frances Johnston or Hastie v. David Newlands, Inspector of Closeburn (Dumfriesshire).*

Held that a pauper was entitled to parochial relief, although she had a joint right with her children to certain property sufficient to maintain her, in respect it was not averred that she could dispose of it without their consent, or that they were willing to maintain her, or to consent to a sale, so as to make the property immediately available for her support,—reserving the recourse of the parochial board against such property, and against her children.

On a complaint by the pauper that she had been refused relief in the circumstances above stated, the sheriff-substitute (Trotter) pronounced the following judgment, which was acquiesced in.

“*Dumfries, 23d April 1847.*—Having again considered the process, with the inspector's statement and pursuer's answers, repels the inspector's reason for refusing relief, and ordains the inspector to afford relief to the pursuer from the parochial funds, reserving to the inspector all competent recourse against such parties as may be in law bound to maintain the pursuer: Finds the inspector liable in expenses, appoints an account thereof to be given in, remits to the clerk of Court to tax the same, and report; and decerns.

(Signed) “JOHN P. TROTTER.

“*Note.*—The inspector states, as the sole reason for relief being refused, that the pursuer and her family are possessed of sufficient property to maintain them. This statement the pursuer expressly denies; and the question therefore arises, whether or not the inspector is entitled, under the present process, to prove it? Now, on this point, the sheriff-substitute is of opinion, that had the inspector alleged that the pursuer was herself individually possessed of property suffi-

cient for her maintenance, he would have been entitled to establish this allegation by proof. But he does not allege this; on the contrary, he alleges that the property in question belongs partly to the pursuer's family. Upon his own shewing, therefore, the pursuer is not in a position to maintain herself without having recourse to property belonging not to herself but to her family. It must be held, however, as nothing to the contrary is stated by the inspector, that the pursuer's family refuse to allow her to have recourse to this property, and if so, such refusal may form a good ground of action, at the inspector's instance, against the pursuer's family, but it affords no sufficient reason for declining to give relief.

(Initialed) "J. P. T."

39. *Widow McCulloch v. The Parish of Coylton (Ayrshire).*

A pauper in receipt of parochial relief having refused, when required by the inspector, to answer certain questions contained in a printed schedule,* and to execute a conveyance of her whole property, whether in possession or in expectancy, for repayment of the parochial board's advances, held by the sheriff, reversing a judgment of the sheriff-substitute, that the board was entitled to refuse farther aliment until these demands were complied with.†

The circumstances of this case are fully explained in the subjoined interlocutors and notes :—

"*Ayr, 15th March 1847.*—The sheriff-substitute having resumed consideration of this process, with the minute for the

* The following is a copy of the Questions and of the Disposition which the Applicant was required to answer and sign in this case.

Questions to be answered, and Declaration to be signed, by every Applicant for Parochial Relief in the parish of _____; and also by all paupers already on the roll of the parish, as often as thereto required by the inspector or managers,—otherwise, to be liable to punishment according to law.

1. What is your name ?
2. Your age ?

† See No. 40, p. 286, and No. 42, p. 289.

applicant, and statement for the inspector, given in in terms of the interlocutors of 5th and 19th February last respectively : Finds it admitted that the applicant was, prior to the date of

3. Your present residence ?

4. (1) The place, and (2) the parish of your birth ?

5. Can you read ?

6. Can you write ?

7. Your parents' names, occupations, and residences ?

8. State here your husband's or wife's name, and connections ?

9. If your husband or wife be dead, state (1) where he or she died, and (2) how long ago ?

10. Have you any right (1) to any heritable property, or succession whatsoever, or (2) are there any debts due to you ? If so, state (3) the value and amount, also (4) the names and addresses of the persons against whom you have claims, and all other particulars regarding the same.

11. (1) Are you in possession of any money in bank or in the hands of any person, or of any moveable property, furniture, or other effects ? If so, (2) state the *sort* of property or effects, and (3) *the value of the whole*, as nearly as possible.

Take Notice.—That if false answers be given to any of the foregoing queries, the parish may eventually claim any funds or property you conceal, and may recover the same at the instance of the inspector.

12. (1) What induced you to leave the place of your birth, or the parish where you had last acquired a settlement ? (2) When did you leave it, and (3) what intermediate parishes have you been in since, and (4) how long did you reside in each ?

13. State here (1) *how long you have resided in this parish* ; and (2) *the particular places* in which you have resided, during each of the last seven years ; also (3) the names and addresses of your landlords, and (4) the rents paid to each. Produce also the landlord's receipts for the rents, and the receipts for the parish rates or taxes which you have paid, or certificates of your residences in the parish.

14. State here (1) what premises you occupy (2), the rent you now pay, and (3) the landlord or factor's name.

15. State here (1) any bodily disease or infirmity which disables you from earning your livelihood, and (2) how long you have been afflicted with it.

Take Notice.—It is desirable to have the answer to this certified by a *medical gentleman*.

16. Have you, or any member of your family, ever received any parochial relief, pension, or charity, from any person or institution ? If so, state (1) the times when, (2) how much you received, and (3) from what source.

17. (1) What place or places of worship have you attended during the time you have been in this parish ? (2) If a communicant in any congregation, produce a certificate from your minister, stating how long you have been so, and your character.

the present application, receiving aid as a pauper from the parish of Coylton, and that this application is now made because of the aliment so received by the applicant being with-

18. (1) To what *business* were you bred, (2) *when* (3) *where*, and (4) under *whose* charge?

19. State (1) how you have been hitherto employed and supported, (2) what you now work at, and (3) your *weekly earnings*, or the earnings of yourself and wife.

20. If you have children, state (1) their names, (2) ages, (3) residences, (4) occupations, (5) by whom employed, and, if married, (6) the number and ages of *their* children.

21. State here the weekly earnings of *each* of your children.

22. State here any other peculiar circumstances in your case, which you consider entitle you to parochial relief.

23. If the parochial board find proper to grant you any alimentary allowance, are you willing to subscribe the annexed declaration and disposition?

The Applicant signs here _____

If any of the answers require more room than has been left for them, such answers are requested to be given in a separate paper, and referred to thus—"See answer on paper apart;" and the separate answers to be titled thus,—"*Further answers to Quest. 1st, or Quest. 2d,*" &c.

N.B.—Paupers will be cautious to give true answers to the whole of the above queries, and to such others as may necessarily be put, and give all requisite information, otherwise they will be liable to be prosecuted for fraud and wilful imposition, upon the truth being discovered.

Declaration and Disposition by the Applicant.

I _____ do hereby solemnly and conscientiously declare, that the written answers before inserted to each of the foregoing printed questions, are all true, and that I have kept back no information necessary to enable the inspector of the poor and the parochial board or managers of the poor after mentioned to judge of my case, but have truly stated the whole, to the best of my knowledge and ability. And in case the parochial board or managers of the poor of the parish of _____, shall allow me as a pauper, either temporary or permanent parochial relief, I hereby bind and oblige myself, and my heirs, executors, and successors, to refund and pay back to the said parochial board such a sum of money as shall be equivalent to the total amount of the several payments made by them to me, or to the aliment, clothing, and other allowance, received by me from them, and my deathbed and funeral expenses, with the legal interest due thereon. And for the better security and more sure payment to the said parochial board of the said sum and interest, I hereby

drawn in consequence of her refusal to answer and sign the questions, and to execute the disposition contained in the printed schedule produced by the inspector, No. 4 of process : Finds that the applicant, in the minute now given in for her, states that she is willing to answer all the questions in the said schedule with the exception of the 17th and 23d, and

assign, dispoŋe, convey, and make over, to and in favour of (*here insert the names, designations, and residences of the trustees*), the acceptors or acceptor, survivors or survivor of them, as trustees or trustee for the purposes after mentioned (declaring that a majority of the said trustees shall always be a quorum), all and sundry lands and heritages, goods and gear, debts and sums of money, and, in general, the whole estate, funds, and effects, presently belonging, or that shall pertain or belong, to me at any time during my life; but in trust always, for the purposes after specified, viz.—*First*, for paying the expense of executing this trust; *Secondly*, for repayment to the said parochial board of the said sum of money, and interest foresaid; and, *thirdly*, for accounting for, and paying, assigning, or disposing the residue to my own nearest heirs and assignees whomsoever, with power to the said trustees and their foressaids to sell and dispose of the said estate and effects, and also to assume such other person or persons as they, with the consent and approbation of the said parochial board, may think fit, to act along with them, or after their decease, with the same powers and immunities as the said original trustees; declaring that the said trustees shall not be liable for omissions, or neglect of management, nor *singuli in solidum*, but each for his own acts and intromissions only. And I consent to the registration hereof in the books of Council and Session, or others competent, therein to remain for preservation, and that all diligence necessary may pass on a decree to be interponed hereto, and thereto constitute

my procurators, &c.—In witness whereof, I have subscribed these presents, written, in so far as not printed, on this and the preceding page, by
at _____, the _____ day of _____ eighteen
hundred and forty _____ years before these witnesses,

The Applicant signs here _____

Two witnesses sign here, each
adding the word witness,
and his address after his
name.

Note.—The foregoing declaration and disposition must be executed in presence of a person acquainted with legal forms, and filled up by him, or the applicant must attend at the inspector's office, and sign it in presence of the inspector, or assistant-inspector, or clerk there. .

that the inspector only now insists on her executing, as the condition of her obtaining relief, the disposition subjoined to the said schedule in the terms therein set forth, or according to such other form as the applicant herself may choose : Finds it not alleged that the applicant is possessed of any available property, but that she is required, nevertheless, to execute a conveyance of her whole effects, of whatever nature, now belonging, or which may afterwards belong, to her, at the time of her death, in security for repayment to the parish of Coylton of what sums of aliment may, in the event of her granting such a disposition, be provided to her, and that until such a disposition be granted, the said parish insists on paying no farther aliment to the applicant : Finds it admitted by the inspector that the applicant was formerly on the roll of occasional poor of the parish of Coylton, and that, no objection is stated to her being replaced thereon, except her refusal to execute the said disposition as aforesaid : Finds that no valid grounds in law are stated by the inspector, and no circumstances in the present case appear to make the granting of such a conveyance by the applicant the condition of her receiving aliment from the parish of Coylton, if she be otherwise a proper object of parochial relief, which the inspector admits to be the fact, and which, moreover, is proved by her having been formerly, and until very recently on the roll of poor of said parish : Therefore, finds the applicant entitled to relief, and ordains the parochial board of the parish of Coylton immediately to meet for the purpose of taking her case into consideration, and awarding her needful sustentation : Finds the applicant entitled to expenses, and remits the account thereof, when lodged, to the auditor to tax and report ; and decerns.

(Signed) " J. ROBISON.

" *Note.*—The case of M'Lauchlan* does not seem to sanction the doctrine for which it is quoted by the inspector. In that case the pauper was possessed of some heritable property, and after his death the kirk-session first obtained certain de-

* M'Lauchlan, 25th January 1828 ; Shaw 6-443 (No. 146, p. 82.)

crees against his daughter (who was also the pauper's dis-
ponee), and, finally, an adjudication of the property itself for
repayment of certain alleged advances to the pauper and an
idiot son. Of these decrees, and of the adjudication, the
daughter afterwards brought a reduction, in which she chiefly
insisted on the want of any legitimate evidence of the ad-
vances by the kirk-session, from their not having obtained a
conveyance to the property of the pauper, and from their
being only able to refer to entries in their own books as in-
structing the advances; and it was with special reference to
that question that the Lord Ordinary ordered cases 'as to
how far the kirk-session, *ipso facto*, became creditors on any
property the pauper may have died possessed of, for any sums
advanced by them for aliment to the pauper without any dis-
position *omnium bonorum* having been granted by him in
their favour.' On the cause being reported to the Court,
they decerned in the reduction, but found the kirk-session en-
titled to certain deductions in accounting for the rents of the
property with which they had intromitted, thus holding that
the advances by the kirk-session did not of themselves consti-
tute a debt against the pauper, for repayment of which his
estate could be adjudged. Now, the principle of this decision
is taken to be quite plain, and it is just this, that aliment ad-
vanced to a pauper does not make the pauper a debtor in re-
petition to the parish which advances the aliment in the ge-
neral case. The case of M'Lauchlan is, no doubt, an au-
thority, to the effect that where a pauper is possessed of avail-
able property, the parish may lawfully require a conveyance
thereto for their relief, or withhold the farther continuance
of aliment; but then this proceeds upon the principle that
every man's property must first be exhausted in his own sup-
port before he can come upon the parish, and that to the ex-
tent, therefore, of what property any individual is possessed
of, the parish is not bound to aliment him as a pauper, or if
they do, but without taking a conveyance, on which they may
have recourse upon his property, or some other equally good
and valid voucher of debt, that they must be held to have
advanced the aliment gratuitously. And, accordingly, this
was the argument which was successfully maintained in the

case of M'Lauchlan. But does it follow that where a pauper is possessed of no funds, the kirk-session, or, now, the parochial board, are entitled to insist that he shall execute a disposition *omnium bonorum* in their favour, before being admitted to relief? And if the pauper should be unwilling to grant such a deed, is he to be allowed to starve in consequence? The sheriff-substitute is unable to deduce any such inferences from the decision of the Supreme Court in the case of M'Lauchlan. He has always understood it to be the principle of the law of Scotland, that the necessitous poor are entitled to be supported as a matter of right, and the express provisions of the numerous statutes relative to the poor shew this. Undoubtedly, wherever there are grounds to suspect that there has been any concealment of funds, or an attempt to deceive, the parish authorities are not only vested with a large discretion, but have also the express authority of the ancient but still fundamental statute 1579, c. 74, for instituting the most rigid examination into the circumstances of every claimant for charity who comes before them. But this necessary and just procedure is a very different thing from the attempt which is now made by the present defender to convert into a debt an alimentary subsistence which, both by its own nature and by the positive enactment of law, does not carry with it the obligation of repayment. There is a double hardship in this case, that the applicant was formerly on the roll of poor, and has been thrown off for no better reason than that now reviewed. The sheriff-substitute cannot approve of that proceeding; and the best redress which the parochial board can now make for their error, is to reinstate the applicant on the poor's-roll of the parish with the least possible delay.

(Initialed) "J. R."

The parish of Coylton appealed. The sheriff (Bell) pronounced the following judgment:—

"Ayr, 2d April 1847.—The sheriff having considered this process, the sheriff-substitute, as advised by him, alters the interlocutor complained of; finds that the parochial board of the parish of Coylton did right in refusing further aliment to the pursuer, on her declining to answer the questions in

the printed schedule, No. 1. (which are merely a particularization of the inquiries authorised by the Act 8 and 9 Victoria, cap. 83, sect. 70), and declining to execute a trust-conveyance *omnium bonorum* for behoof of the parish, in the terms specified in the above schedule, or in other terms equivalent thereto; finds that the pursuer has no claim to be again admitted to the poor's-roll of Coylton until she answers the questions and executes the conveyance above mentioned; and, with these findings, remits to the sheriff-substitute to do further as he shall think just.

(Signed) “ J. ROBISON.

“ *Note.*—It appears to the sheriff, that in reason and expediency, as well as at common law, no persons can be entitled to gratuitous compulsory relief unless they make over to the parish which relieves them all their means and substance, either in possession or expectancy, to the effect of repayment of the parochial advances, should any funds belong or supervene to the pauper; and he conceives this principle to be plainly recognised in the judgment of the Supreme Court in the case of M'Lauchlan. That judgment says to the kirk-session,—“ You did not take the means which you were entitled and bound to take, to secure repayment of your advances (in case the pauper should have any funds), by obtaining a conveyance of those funds; and, therefore, we will not now go into a long and doubtful inquiry as to payments and advances, but will presume that those advances were made gratuitously—you not having taken the proper steps to verify and recover them.” And if such a right was competent and reasonable on the part of a parish at the date of the above judgment, it is much more so now, when, by the late Act, the provision for the poor has been so greatly facilitated and extended. The sheriff-substitute seems to admit this principle where the pauper actually has funds, but to deny it where no funds are apparent. But this is a distinction which the sheriff cannot recognise. If the pauper has no funds, he will suffer nothing by granting a conveyance. If he has funds, he is bound to make them available. The great object of the conveyance is to prevent fraudulent con-

cealment of funds, present or future, which the parish has no means of discovering, but which, if they exist or supervene, ought to be made liable in repayment of the support received. The sheriff does not conclude his interlocutor with a *decree absolvitor*, as he thinks it possible that the pursuer may agree to execute the conveyance, in which case the interlocutor of the sheriff-substitute may be implemented. But if the pursuer wishes to appeal to the Supreme Court, it will be necessary for either the sheriff-substitute or the sheriff himself to pronounce *decree absolvitor*, in order to render the case final and capable of advocacy, for none of the grounds of interim advocacy in the Act 50 Geo. III., cap. 112, seem applicable, even with the sheriff's permission. The case brings out a point of much importance in the practical administration of the late statute, and it would be desirable to have it determined by the Supreme Court."

40. *Isabella Nicol v. Inspector of Ayr.*

Held that a pauper who drew the rents of a small property belonging to her brother, a sailor, who had not been heard of for six years, was not bound to give authority to the inspector to uplift these rents as a condition to her receiving relief, nor to execute a conveyance of her eventual interest in the property as her brother's heir, there being no averment that he was dead.*

Isabella Nicol has an admitted settlement in the parish of Ayr. Her brother, a sailor, has been abroad for six years, and during his absence she uplifted the rents of a small property belonging to him. On applying for parochial relief she was at first refused; but, subsequently, the parochial board gave an order for her admission to the poorhouse of Ayr, "on her granting authority to the inspector to uplift the rents she is now in receipt of, the board being bound to hold count and reckoning with any third party who may be entitled thereto." She complained to the sheriff. The sheriff-substitute (Robison), on 17th August 1847, pronounced the following judgment:—

* See No. 39, p. 278, and No. 42, p. 289.

" Finds it admitted that the property referred to in process is not the applicant's own, but belongs to her brother, who is stated to be a sailor, and not to have been heard of for six years ; but whose death is not alleged, and cannot yet be presumed : finds that the applicant cannot, therefore, be required to execute a conveyance of the said property in favour of the parish, as the condition of her obtaining relief ; and, therefore, finds that the applicant is entitled to relief ; and ordains the parochial board immediately to meet to determine thereupon : finds the applicant entitled to expenses, as the same shall be taxed, and decerns.

(Signed) " J. ROBISON.

" *Note.*—The judgment pronounced upon appeal in the case of *M'Culloch v. the Parish of Coylton*,* must rule all similar questions in this Court, until the Supreme Court has occasion to decide the point. But there is this distinction betwixt the present case and that referred to, that the property to which the parish required a conveyance admittedly does not belong to the applicant. The applicant, it is true, is now drawing the rents, and the benefit which she thus draws may, with propriety, be taken into account in fixing the amount of her aliment. But further than this the sheriff-substitute does not see that the parish has any right to control the applicant, by compelling her, as the condition of her obtaining relief, to dispoise away property which is not her own to convey."

The sheriff (Bell) adhered on appeal, with the following note :—

" *Note.*—It was not without considerable hesitation that the sheriff came to the above decision, as he still retains the opinion which he expressed in the case of *Coylton parish*, that no one is entitled to parochial support who refuses to make over any valuable property or means of which they are owners. But the distinction here is, that the pauper is not legally the owner of any property, except in the event of her brother's death, a fact not ascertained. Should it afterwards appear that he is dead, the board may discontinue her allowance if she decline conveying over her property."

* See No. 39, p. 278.

41. *Johnstone v. Inspector of Barony Parish, Glasgow,*
(*Lanarkshire.*)

An inspector, when applied to for relief by the wife of a bedrid pauper, having referred her to another parish, alleging that the pauper's house was a disputed boundary between his and the adjoining parish; and having failed "to make inquiry forthwith" into the circumstances of the applicant, in terms of the 70th section of the Poor-Law Act; and the pauper having made a complaint to the sheriff next day, held that the inspector had failed in his statutory duty, and the complaint sustained with expenses.

The pursuer had been more than eighteen months confined to bed. He resided in 282 Buchanan Street, and his wife made the first application on his behalf, at the Barony parish rooms, on 3d May 1847. The treasurer at the Barony rooms refused to listen to her, and said that 282 Buchanan Street was "a disputed boundary line" between his parish and the City parish; and he sent her away to the Town's Hospital. The pursuer's wife presented herself at the Town's Hospital; but she was informed there that her residence was in the Barony parish. The inspector of the City parish, however, visited the pursuer's house, and afterwards addressed the following note to the pursuer's agent:—"Dear Sir,—The bearer, Mrs Johnstone, residing in 282 Buchanan Street, has just applied to me for parish relief, her husband being for a long time confined to bed in ill health. She states she has come straight from Mr M'Laren, who refused her relief, and sent her to me. She lives in the Barony parish, and, to make sure, I visited the house, and saw her husband. You should make an application to the sheriff on her husband's behalf, as this is the second time the Barony have played me the same game from the same land. In the first case, they starved the poor old woman for three months, so I trust you will prevent a similar occurrence. Yours, &c. _____"

The sheriff-substitute (Bell) found the pursuer entitled to relief from the Barony parish, and ordained the parochial board to determine its amount; but found no expenses due to

either party. The case, however, came before the sheriff (Alison), on appeal, and his lordship decerned as follows :—

“ *Glasgow, 2d August 1847.*—Having considered the interlocutor complained of, and reviewed the process, finds that, it being now admitted that the pursuer is a fit object of parochial relief, and not disputed that his claim lies against the Barony parish in respect of his residence at 282 Buchanan Street, the only question that remains is that of expenses ; finds it admitted that the pursuer's wife applied for relief on the 3d May last ; finds it not averred by the defender that any relief was given before the date of this application, which was presented on the 4th May ; finds it not averred that the defender, as required by the regulations, made personal inquiry as to the circumstances of the pursuer ; finds it established that, instead of making such personal inquiry, the inspector of the Barony parish contented himself with referring the applicant to the inspector for the Town's Hospital, by whom the personal inquiry was made, as instructed by the production No. 12 of Process, and which established that the petitioner's claim lay against the Barony parish ; finds, that, in these circumstances, the petitioner was entitled to present the petition No. 1 ; finds expenses due, allows an account thereof to be given in, and remits the same to the auditor to tax and report.

(Signed) “ A. ALISON.”

42. *Rogers v. Cassels, (Lanarkshire.)*

Held, reversing a judgment of the sheriff-substitute, that while an applicant for relief is bound to answer personal inquiries, the parochial board and inspector are not entitled to devolve on the applicant the duty of filling up written answers in a printed schedule, nor to withhold relief on the ground that the applicant had failed to comply with such a demand.*

The present action was raised at the instance of a poor woman deserted by her husband, and burdened with two in-

* See the case of *Widow McCulloch v. Parish of Coynton*, p. 278, No. 39. See also *Nicol's case*, No. 40, p. 286.

fants, both under two years of age, on the ground that when she applied for relief, a printed schedule was given her to fill up, as a condition of her receiving relief. The defender denied that relief was refused, resting his defence on the propriety of issuing the schedule, and the sheriff-substitute allowed a proof of the points upon which the parties differed. The pursuer, however, declined to lead any proof, resting her case upon the defender's admission. The sheriff-substitute assailed the defender, and dismissed the action; on which the pursuer appealed to the sheriff, who pronounced the following judgment:—

“ *Glasgow*, 18th January 1847. —Having considered the interlocutor appealed from, and reviewed the process, before answer, appoints the defender, within four days, to lodge in process a short minute of debate, applicable to the views contained in the following note, to be seen and answered by the pursuer within four days thereafter, under certification; meanwhile suspends the interlocutor complained of, and ordains the inspector to afford interim relief to the pursuer in terms of law.

(Signed) “ A. ALISON.

“ *Note.*—The sheriff has considerable doubts of the interlocutor under review, and that chiefly on two grounds: 1st, The very doubtful legality of requiring a person applying for parochial aid to answer the very questions propounded in the schedule No. 2; and, 2d, Whether the fact of the pursuer being deserted by her husband, and in necessitous circumstances, is not sufficiently admitted, or at least not denied on record, so as to render any proof unnecessary. On the first point, the duty of the inspector of the parish, in regard to inquiring into the circumstances of the applicant, is clearly and distinctly laid down in rule 11 (page 172), of the rules issued by the Board of Supervision. It is there declared,— ‘ In every case in which application may be made to the inspector for relief (whether the applicant has a settlement in the parish or not), it shall be the duty of the inspector to make *immediate* inquiry into the circumstances of the case, by visiting, either personally or by an assistant-inspector, duly appointed by the parochial board, the *home* of the ap-

plicant, and by making all necessary inquiries into the state of health, the ability to work, and the means of support of the applicant.' And by rule 13, it is declared to be 'the duty of the inspector, and of each assistant-inspector, to insert, in a book kept for that purpose, the date of his *visit*, and any observations he may think it material to make on the condition of the pauper.'

"The sheriff is unable to discover any authority in the statute, or the regulations issued by the board of supervision, which entitles the inspectors to shake *themselves loose of these injunctions*, and in lieu thereof, to require the pauper to fill up a *complicated schedule*, containing numerous questions similar to one by a party effecting a life insurance, and containing many queries wholly irrelevant to an application for parochial relief, as for example, 'Where have you resided for the last six years?' 'Produce landlord's receipts?' The sheriff, therefore, wishes particularly to see whether the inspector can point out any authority in the statute, decisions of the Supreme Court, or rules promulgated by competent authority, which empower him, *instead of making the personal inquiries directed by the regulations*, and entering the date of his visit in a book, to issue a list of questions, and require the applicant to answer and fill up the same, whether she can read or write or not; and still more, whether this can be insisted for, under the penalty of relief being refused, if not complied with. It need hardly be said, that the alleged fact of the applicant here having *not objected* to the schedule when put into her hands is wholly immaterial, as it can hardly be supposed that a poor female pauper is to know what can legally be required of her by the inspector of the parish to which she applied. It will be observed that the pursuer expressly alleges in article second of the petition, No. 1, that she applied for relief, and was refused unless she filled up the schedule; and this allegation is not specifically denied on the other side in the corresponding article. On the contrary, it is admitted that a schedule was put into the pursuer's hands, and the additional plea in law is, 'The pursuer was, at all events, bound to give the information required by the schedule produced, whether she subscribed it

or not.' The sheriff is well aware that, by the 70th section of the Poor-Law Act, the applicant is bound to give all information and assistance in his or her power regarding the parish of the applicant's domicile, or anything else connected with the case; but it is one thing to give information in answer to personal inquiries and a domiciliary visit, but it is another and a very different thing to require a long schedule to be filled up.

"In the next place, as to whether relief was asked and refused, it is admitted in the inspector's statement, that the pursuer called *twice*, viz., on Tuesday the 13th, and Wednesday the 14th October, asking relief; and that on the second occasion he gave her the schedule. The defender admits all this; and he does not allege that he offered or gave any relief, but his allegation is, that he gave her the schedule to fill up and return *immediately*, that relief *might* be afforded. The pursuer's allegation on this point is, that she was desired to fill up the schedule, and 'her case would be considered.' The difference is not so material as might at first sight appear, in the view the sheriff takes of this case; for what he doubts is, whether the inspector was *entitled to require the filling up the schedule at all*, instead of making an immediate personal visit and inquiry, as required by the regulations; and whether, as it is not alleged by the inspector that the pursuer has got any relief, and she positively asserts that she was told she must fill up the schedule put into her hands to fill, before the case would be considered,—and it is admitted she got the schedule put into her hands to fill up, and not denied that the pursuer is deserted, at least at present, by her husband, and has two children to maintain,—there is not enough admitted to found a legal claim, at least for interim aliment, from the parish where she is at present domiciled. That parish may have a claim of relief on the Barony parish, as the one ultimately liable in aliment, but that is a matter between parishes, with which the pursuer has no concern.

(Initialed) "A. A."

"Glasgow, 1st February 1847.—Having heard parties on a motion for the defender, craving time to lodge his mi-

nute of debate ; in respect it is stated by the defender that he wishes to get the minute drawn by counsel, and it is admitted by the pursuer that she is receiving interim relief from the parish, at the rate of 3s. 6d. per week, allows the defender eight days from this date to lodge his minute, under renewed certification.

(Signed) " A. ALISON."

The minute of debate for the defender having been accordingly prepared by counsel, and answered by Mr Donald Ross, the pursuer's agent, the sheriff pronounced the following final judgment :—

" *Glasgow, 25th February 1847.*—Having resumed consideration of this case, along with the minute of debate and answers now lodged for the parties, and again reviewed the whole process, finds, that it is admitted by the defender, the inspector of the poor, in his statement No. 4, (1st,) That on Tuesday evening, the 13th of October, the petitioner called at the inspector's office, stating that her husband, a gilder with Mr Daniel Chisholm, and in receipt of 21s. a week of wages, had gone a-drinking the night before, with part of his wages, and had not been home all night : (2d,) That at this time the petitioner asked no relief, but was advised by the inspector to wait till next day, to see whether her husband would get sober and return, and also to call at his work and make inquiry regarding him, and state to his employer the manner in which he was acting towards his family : (3d,) That next day, Wednesday, the petitioner again called on the inspector, and stated that her husband had not returned, when a schedule was given her to fill up and return immediately, that relief might be granted. Upon receiving this schedule she made no objections to any of the queries or conditions it contained : Finds it not alleged that, in point of fact, any relief was given by the inspector to the petitioner ; and the present application to the sheriff was presented on the 14th October, which sets forth—The petitioner applied to the inspector of the poor for the parish of Govan for relief, but was refused until she should fill up the schedule produced herewith, which contains a *will, declaration, &c.*, and get it signed by witnesses, and otherwise certified : Finds that it

is enacted, in the 70th section of the Poor-Law Act, 8th and 9th Vict., chap. 83, That in every case in which a poor person in any parish or combination shall apply for parochial relief, the inspector of the poor, or other officer of such parish or combination, whose duty it shall be to attend to such applications, shall be bound to make inquiries forthwith into the circumstances of the applicant, and shall, notwithstanding such poor person may not have a settlement in the parish or combination, if he be in other respects legally entitled to parochial relief, be bound to furnish him with sufficient means of subsistence until the next meeting of the parochial board, and such board shall continue to afford to such poor person such interim maintenance as may be judged necessary, until the parish or combination to which such poor person belongs be ascertained and admitted, or otherwise determined, or until he shall be removed; and every inspector of the poor, or other officer, to whom *application shall be made by or on behalf of any poor person for parochial relief, shall be bound to return an answer to such application* within twenty-four hours from the time when it was made: Finds, in addition to this, that it is directed by the rules issued by the Board of Supervision (Rule 11), that in every case in which application may be made to the inspector for relief, whether the applicant has a settlement in the parish or not, it shall be the duty of the inspector to make immediate inquiry into the circumstances of the case, by visiting, either personally, or by an assistant inspector, duly appointed by the parochial board, the home of the applicant, and by making all necessary inquiries into the state of health, the ability to work, and the means of support of the applicant: Finds, that by the 70th section of the statute it is enacted, that if the inspector shall afford relief in the meantime, he may put questions to the applicant himself, and, if necessary, put him upon oath before a proper authority; but that there is no power given to the inspector to devolve upon the applicant the duty of filling up schedules, or to delay granting relief until that has been done, or written answers returned, according to a form adopted and sanctioned by the parochial board: Finds, that it is not declared by the statute that any *verba solennia*

are necessary to constitute a refusal to give relief,* so as to warrant an application to the sheriff; but that it is sufficient if, in point of fact, relief is delayed or not afforded during the period prescribed by the statute, or if the applicant is put off, by the inspector devolving upon him or her a duty of filling up schedules not authorised by the statute, or recognised by competent authority: Finds, that the admissions of the defender here prove that relief was not given to the pursuer, and that interim relief was refused or postponed until she had filled up the schedule put into her hands by the inspector: Finds, that that was not a legal ground for withholding interim relief, and that the declinature to grant interim relief till the schedule was filled up, authorised the present application: Therefore alters the interlocutor complained of, ordains the defender to afford interim relief to the pursuer in terms of law, and remits the pursuer's claim for relief on the merits to be considered by the parochial board, and disposed of by them as may seem just: Finds the defender liable in the expenses of the process; appoints an account thereof to be given in and taxed by the auditor, and decerns.

(Signed) "A. ALISON.

"*Note.*—Although it does not expressly emerge for decision in this case, the sheriff thinks it right to suggest to the parochial authorities, whether it be expedient to continue the practice of issuing schedules to be filled up by the pauper applicants, instead of the inspector making the personal inquiries directed by the statute and the regulations; *whether fraudulent applicants* cannot, with the most perfect ease, fill up such schedules, or get them filled, without the slightest regard to truth; and whether if, as in the present case, the filling up be made the condition of getting even interim relief, it may not throw on illiterate persons, in the last stage of destitution, a burden similar to that which is often felt as oppressive, in regard to assessed or income tax schedules, even by men accustomed to business, and surrounded by all the comforts of life.

(Initialed) "A. A."

* See p. 267.

43. *Parish of Keith v. Parish of Boharm,*
(*Case of James Desson.*)*

A person who maintained himself by keeping a toll-bar, during a residence of the requisite duration, held to have thereby acquired a settlement by residence, though he was above 80 years of age, and unfit for active labour, during the whole period of his residence.

James Desson, a native of the parish of Keith, resided in that parish, on a small croft which he cultivated himself, till the term of Whitsunday 1831, at which period he had attained the age of 77 years. The croft had been sufficient for his maintenance, but, at the above age, though subject to no bodily complaint, yet feeling himself destitute of the physical strength requisite to continue its cultivation, he gave it up for a trifling consideration, not exceeding L.10, by way of grassum. He had duly paid all the rents due for the croft, as they had become payable, but, at leaving it, beyond a few trifling sums due to him by parties of very questionable ability (not, in whole, exceeding L.15), he was *destitute of funds*.

At Whitsunday 1831, when he gave up the croft, he left the parish of Keith, and went into that of Rathven, where he became tacksman of a toll-bar, at an annual rent of L.35. At Whitsunday 1832, he removed to the parish of Bellie, where, in like manner, he became tacksman of a toll-bar, at which he remained for two years, paying of rent the first year L.41, and the second year L.40.

At Whitsunday 1834, being then 80 years of age, he removed to the parish of Boharm, in which he became tacksman of the tolls or pontage payable at the Suspension Bridge, over the Spey; here he remained *exactly three years*, viz., till Whitsunday 1837, paying rents, the first year L.37, the second L.36, and the third L.40. During these three years

* The statement of this case has been furnished by W. Thurburn, Esq., Keith, to whom the editor takes this opportunity of expressing his thanks for the useful information which he has supplied for this work.

he not only supported himself from the income derived from the tolls or pontage, but even saved a little money, not, however, exceeding L.8 or L.10.

At Whitsunday 1837, he left Boharm and removed to Rothies, where he became tacksman of the Sheriffston toll-bar, at a rent of L.13, *one-half of which he paid in advance, out of the savings in Boharm.* At Whitsunday 1838, he returned to Boharm, and there rented a private dwelling-house for a year. At Whitsunday 1839, he returned to the parish of Rathven, where he remained for two years, the former as tacksman of the Port Gordon toll-bar, at a rent of L.70, and the latter as tenant of a private dwelling-house. At Whitsunday 1841 he left Rathven, and (for the first time since his leaving it at Whitsunday 1831), being now 87 years of age, returned to *Keith*.

Hitherto he had entirely supported himself, having in none of the parishes in which he had yet been, either applied for, or received parochial relief.

In June 1841 he applied to the kirk-session of Keith for relief, and was relieved; Keith, however, on the allegation, that by his three years residence in Boharm, from Whitsunday 1834 to Whitsunday 1837, he had acquired a settlement there, which released them, demanded restitution of their advances from Boharm. Boharm denied its liability, mainly on the ground that Desson being 77 years of age before he left Keith, and 80 when he came into Boharm, was *then* a proper object of relief, and ought then to have been on the roll of Keith; and that such being the case, he could not thereafter have acquired a settlement in Boharm or anywhere else. Keith, on the other hand, maintained that Desson's advanced age, at leaving that parish, afforded only a *presumption* of his being a proper object of relief, but which presumption was overturned by the admitted facts of the case, he having, in point of fact, for ten years thereafter, supported himself without relief.

The arbiter, Alexander Currie, Esq., sheriff of Banffshire, issued the following note:—

1st September 1845.—The referee has carefully considered the statements, pleadings, and productions for the par-

ties in this reference, and he is at present of opinion, that the pauper, James Desson, belongs to the parish of Boharm, and that Boharm is the parish responsible for the said James Desson's support and maintenance.

"The ground of this opinion is the admitted fact that Desson was, during three years, from Whitsunday 1834 to Whitsunday 1837, continuously resident in the parish of Boharm. For, by that residence, he acquired a settlement in Boharm, which liberated Keith, unless Boharm, on which the *onus* thenceforward lay, had proved, what has not even been alleged, that Desson, subsequently to 1837, had reacquired a new settlement in Keith.

"Some statements have been made on the part of Boharm, with the view of shewing that Desson, before he left Keith in 1831, was a proper object of parochial relief, and ought then to have received aid from the parish of Keith. No doubt, it has been held that, if a person has been a fit object for being placed on the list of the poor, it does not matter that he has not been actually admitted on the roll. But, in the referee's opinion, the circumstances averred by Boharm, if proved, would not be relevant to shew that Desson ought to have been admitted on the roll of the poor of Keith in 1831. 1. Although Desson was advanced in life, it is not said that, in 1831 or previously, he had received any support from any one, or from any source, other than his own industry. 2. Although the parties differ as to the exact state of Desson's circumstances in 1831, yet, even Boharm admits that Desson, on giving up his croft in that year, was clear with the world, and had something over. 3. The keeping of a toll-bar, though less laborious, is not, in a legal sense, less industrial than the employment in which Desson was previously engaged. It is often resorted to by persons in the vigour of life, and so far from implying poverty in the keeper, rather indicates the possession of some means or, at all events, trustworthiness and ability to do the duty, so as to account for the toll-duties or rent, and keep his securities safe. And, 4. These considerations are strengthened by the fact that Desson cleared his way as a toll-keeper, and did not apply for parochial aid till 1841, ten years afterwards. Al-

lusion has been made to the hardship on the parish of Boharm; and no doubt there is, in point of residence, in that parish, barely enough to constitute a settlement by Desson there. But there being enough to constitute that settlement, that is all that is requisite in law for the solution and decision of the question between that parish and Keith.

If those acting for Boharm wish to be farther heard, the referee will appoint some time, as early as he can, for hearing the parties orally. He thinks it unnecessary for the parties to incur any farther expense in the form of written pleadings.

(Signed) "ALEX. CURRIE."

To the opinions thus indicated, the arbiter, after advising a representation for Boharm, and answers thereto for Keith, adhered, by the following note:—

"6th October 1846.—The referee, after considering the representation of Boharm, and the answers for Keith, and reconsidering the previous procedure, had a meeting with the agents at Keith, in April last, when he stated to them, that there was nothing in the representation for Boharm to shake the opinion to which he formerly came, as explained in the former note. What is alleged by Boharm as to the circumstances of Desson, when he left Keith, or when he came to Boharm is, in the referee's opinion, not relevant to instruct that Desson was at either of those periods a person who ought to have been admitted to the pauper roll of the parish of Keith. The grounds of this opinion are explained in the former note, and need not be repeated. Having been informed, that it is wished to have the referee's opinion in writing, he now, after again perusing the whole papers in the case, gives this note of it. Not having the reference before him, the referee cannot say whether it contains any power as to expenses. At any rate, he is of opinion, that in the whole circumstances of the case, each party should defray their own expenses."

(Signed) "ALEX. CURRIE."

44. *Parish of Keith v. Parish of Glass.*
(*John Moir's Child.*)

The settlement of a legitimate child held to be in the parish in which its father had a settlement by parentage (through the birth and residence of *his* father), in preference to the parish in which the child itself was born.

This question related to the maintenance of a deserted child.

John Moir, the paternal grandfather of the child, was a native of the parish of Glass, in which parish he resided till he attained the age of manhood, and had married. About the year 1805 he enlisted as a soldier, and served in the Peninsular War. In 1815, he was stationed with his regiment at Belfast, in Ireland, and in 1816 he was, whilst still there, joined by his wife, who removed from Scotland for this purpose. During that year, and whilst still in Belfast, she gave birth to a son, also named John Moir, the father of the child whose settlement is now in question. This John Moir, when a few months old, was removed to the parish of Glass, where he was brought up by his grandmother, assisted by occasional relief from the poor's funds of that parish. His father came with him to Scotland, but immediately returned to his regiment in Belfast, and soon afterwards went to Jamaica, where he died. In the meantime his son, the father of the deserted child in question, remained in the parish of Glass until he was upwards of twenty years of age, employed as a farm-servant, and supporting himself. In the year 1839, he removed into some of the adjoining parishes, and about the year 1840, married a woman in the parish of Gartly; thereafter his wife occupied a house in the parish of Huntly for about two years, and removed to the parish of Keith, where she staid two years more, during which time he himself was employed, sometimes in one parish, sometimes in another. During this period, the child whose settlement is in question, was born in the parish of Keith, and whilst the mother was residing there: the mother dying,

the child was left with a nurse in Keith, where it still is ; and the father having, since the passing of the recent Poor-Law Act, deserted it there, it has thus become chargeable in that parish.

Under these circumstances it is maintained by Glass, that, *without* pretending to say what parish is liable, it is not liable for the support of this deserted child, for the following reasons, viz.,—

1. That the child being now in Keith, where it has become chargeable, Keith must continue to support it till it can find out the real parish of settlement, if Keith be not so itself.

2. That the child being a legitimate child, its parish must be regulated by that of its father ; and that the question, therefore, resolves itself into this, viz., which is its *father's* parish ?

3. That *Glass* is not its father's parish, in respect the only settlement he ever acquired there was one by residence, which, under the 76th section of the recent Poor-Law Act, has not been *retained*, the child in question not having become a proper object of relief until *after* the passing of that Act.

4. That if it could be held under the circumstances before narrated, that the father ever had a settlement in Glass by *parentage*, that settlement was entirely annulled and discharged by the one which he subsequently acquired there by residence in his own right,—and that that residence settlement has now been also lost under the clause of the recent Poor-Law Act above referred to ; and,

5. That such being the case, and he having now no known settlement, his child must fall back (if its settlement is to be regulated by its father's) on the parish of *his* birth, or, if not, to be regulated by his settlement, that it must fall back on the parish of its own birth ; and, consequently, as Glass is not the parish of birth of either the child itself or its father, it can in no view be liable for its support.

Keith, on the other hand, maintains,—

1. That the child's father clearly had a settlement in Glass by *parentage*, and that the subsequent one by residence, in

the same parish, did *not* discharge or annul the parentage settlement.

2. That in order to relieve the parish of parentage, there must be proved to be a settlement by residence, in force, on which the pauper can be chargeable.

3. That by the 77th section of the 8th and 9th Victoria, cap. 83, Glass is still liable; and that as the 76th section of said Act provides no parish to fall back upon, by taking it in connection with the 91st section of said Act, Glass may be still liable, notwithstanding the provisions of the 76th section.

The referee (Robert Whigham, Esq., sheriff of Perthshire) pronounced the following judgment (Dec. 1846):—

“ I am of opinion that Glass is the parish liable in the maintenance of the child in question. The child's father had a legal settlement in that parish, first by parentage, and second by residence; but his settlement by residence did not render of no effect or validity the settlement by parentage, though, if continued in terms of the recent act, it might have superseded it. By force of the 76th section of that statute, the child's father lost his residence-settlement in Glass, from not having resided *continuously* there for at least a year, and from his not having been a proper object of parochial relief at the date of the passing of the act. But though he did not *retain* his settlement of residence in the parish of Glass, he confessedly did *not acquire* a settlement afterwards by residence elsewhere; and as, under the circumstances, the residence by parentage was not made of no effect, it must be fallen back upon, and so subject Glass in the child's maintenance.

“ The fact that the child was born in Keith, will not render that parish liable beyond the temporary obligation of maintenance, until it has been ascertained and fixed where the father's last parish of settlement was.

(Signed) “ ROBT. WHIGHAM.”

**45. *Parish of Rhynie v. Parish of Auchindoir.*
(*James Henderson's case.*)**

Circumstances in which a settlement by residence, liberating a previous settlement, was held to have been established.*

In this case, the facts were stated by the contending parties, in a joint minute, to the following effect:—

Up to the year 1828, Margaret Paxton resided with her mother in the parish of Rhynie. At that time James Henderson resided in the parish of Auchindoir, the parish of his nativity, in which his father had a small farm. At this period Auchindoir was the parish of the settlement of James Henderson. In 1828, James Henderson married Margaret Paxton. She continued to reside with her mother in Rhynie, where Henderson was an occasional visitor. He remained in the parish of Auchindoir, in service, residing on the premises of his employer, or at his father's, or at an uncle's, who resided in the same parish. In 1830, or about two years after his marriage, James Henderson removed his wife to lodgings in Auchindoir, which they occupied for one year only, when Margaret Paxton returned to her mother's in Rhynie, and continued with her up to 1839, a period of eight years. During the whole of these eight years, Widow Paxton, the mother, was a pauper, receiving relief from the kirk-session of Rhynie. The house was rented by her. Henderson was never regarded by any of the landlords as tenant of any part of it, except during the period from Whitsunday 1838 to Whitsunday 1839, for which period Henderson paid his proportion of the rent. He never gave any obligation, nor was held bound for any portion of the rent by them, although both Widow Paxton and Margaret Paxton maintain that Henderson actually contributed a portion of the said rent; that he supported his wife, to the extent of paying that part of the rent, and supplying her with meal only, but that she was burdensome to no other person, and that in Rhynie she bore to Henderson four children. In 1839, Henderson again

* See No. 36, p. 273.

removed his wife and family to Auchindoir, where they continued to live till October 1841, or for two and a half years, when Henderson deserted them. After his desertion, in October 1841, his wife and family received relief from the poor's funds of Rhynie and Auchindoir, until an action was brought by his wife, *in forma pauperis*, against her husband's father, who was found liable, and after his liability was established, supported her up to the time of his death in the end of 1843, which she believes was for one year; and a portion, at least, of the advances made by the kirk-session of Auchindoir was also recovered. From the date of his marriage in 1828, to the date of his desertion in 1841, a period of thirteen years, Henderson was only during one harvest in service in Rhynie, and generally visited his wife once a week, or once a fortnight, during the whole period of her residence in Rhynie. On the father's death, application was again made to the kirk-session of Auchindoir for relief, which has been given by them up to this time, until the question be set at rest whether the parish of Auchindoir or of Rhynie is liable.

(Signed)

JOHN CHRISTIE,

Inspector of Poor, Auchindoir.

JAS. ROGER,

Inspector of Poor, Rhynie.

2d November 1846.

The following is the judgment pronounced by Andrew Murray, Esq., late sheriff of Aberdeenshire:—

“ From the preceding statement it appears that Henderson retained the settlement of his birth in the parish of Auchindoir up to the year 1828, and thereafter until he should acquire a settlement in another parish. But in 1831 his wife returned to the parish of Rhynie, her maiden settlement, where she lived eight years with her family, which at that time came to consist of four children, her husband continuing to work as a labourer where he could get employment, which was sometimes in the parish of Rhynie, but chiefly in the neighbouring parishes, and visiting his wife and family once a week or once a fortnight. During this

period, it is humbly conceived that Henderson's domicile was in the parish of Rhynie. He had no other: *There* were his *lares et penates*, however humble. It matters not that Henderson and his family lived in the house with his wife's mother. *She* was a pauper receiving parish aid, and could not maintain them; and Henderson, an able-bodied man, and his wife, maintained themselves and family without parish aid, or asking charity from any one. Neither does it prevent Henderson from acquiring a settlement, that the parish of Rhynie (as stated in the observations for that parish) might have a claim of relief against him for the parochial aid afforded to his wife's mother,—a claim of very doubtful expediency to be tried to be enforced, and which was never enforced. In these circumstances, I am of opinion that Henderson acquired a settlement in the parish of Rhynie; and his subsequent residence in the parish of Auchindoir not being sufficient to reinstate him there, that the parish of Rhynie is liable for the maintenance of his family as long as they continue proper objects of parish relief.

(Signed) "ANDW. MURRAY.

"*Edinburgh, 27th November 1846.*"

ADDENDUM TO DECISIONS.

William Hardie, assistant-inspector, Falkirk, was charged at the instance of the Lord Advocate, at the Stirling Justiciary Circuit of spring 1847, with "CULPABLE HOMICIDE; as also the wicked and wilful, or wicked and culpable neglect of duty, and violation of the duties of his office, by a public officer, more particularly by an assistant-inspector of the poor, especially when committed to the injury of the person or health, or to the danger of the life of any poor person under his superintendence or charge;" IN SO FAR AS he was alleged to have failed and neglected to inquire into the particular circumstances of Margaret Cameron, an applicant for relief, and to report these circumstances to the parochial board, and duly to enter her name in the proper lists or registers, and to return an answer to her applications within twenty-four hours after each application for relief, or additional relief; and to visit her home "so soon as might be after her sickness or disease

first became known to him, or *with due care and attention might have become known to him*," and from time to time thereafter; and to take measures, on his own responsibility, or otherwise, for procuring medical aid without delay; and to supply her with articles which were necessary by reason of her sickness or disease, and destitution;—in consequence of which neglects, the pauper was alleged to have been injured in her person and health, and to have eventually died. The charge was found relevant to infer the pains of law; and the case, on the application of the accused, without objection on the part of the Crown, certified for trial to the High Court; the accused being, in the meantime, committed to prison for trial.—William Hardie, 10th April 1847; Arkley's Reports, p. 247.

A lodging-house-keeper, and another person, who pleaded guilty to the culpable removal, and cruel and reckless treatment and desertion of a sick person, sentenced respectively to nine and six months' imprisonment.—M'Manimy, 28th June 1847 (High Court); Arkley's Reports, p. 321.

ALPHABETICAL INDEX.

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References to the several divisions of the work are distinguished thus:—

p.....Principles.

d.....Decisions.

a.....Acts,

r.....Rules and Regulations.

Thus: *d* 52...4, 6. *a* 113...15, 25. *p* 23...59, 60; 26...66, 67; signify Decisions, page 52, sections 4 and 6: Acts, page 113, lines 15 and 25: Principles, page 23, sections 59 and 60, and page 26, sections 66 and 67.

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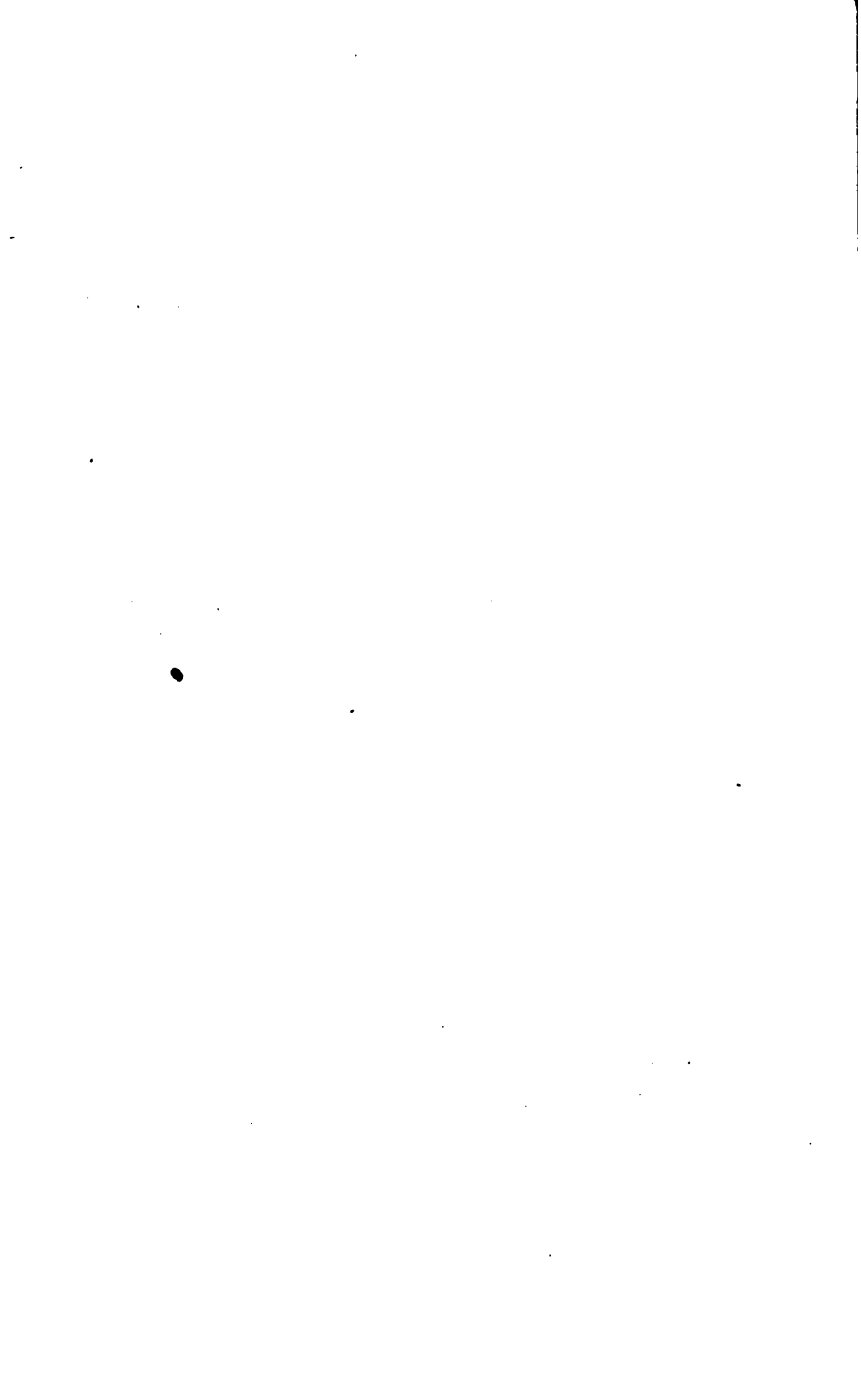
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THE END.

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